



FACT SHEETS FOR INDIVIDUAL MEETING SESSIONS

WITH INDIAN NATION LEADERSHIP

**Annual Indian Nations Leaders Meeting
Seneca Nation of Indians ~ Allegany Territory
Seneca Allegany Administration Building (SAAB)
Salamanca, NY
July 20 – 21, 2011**



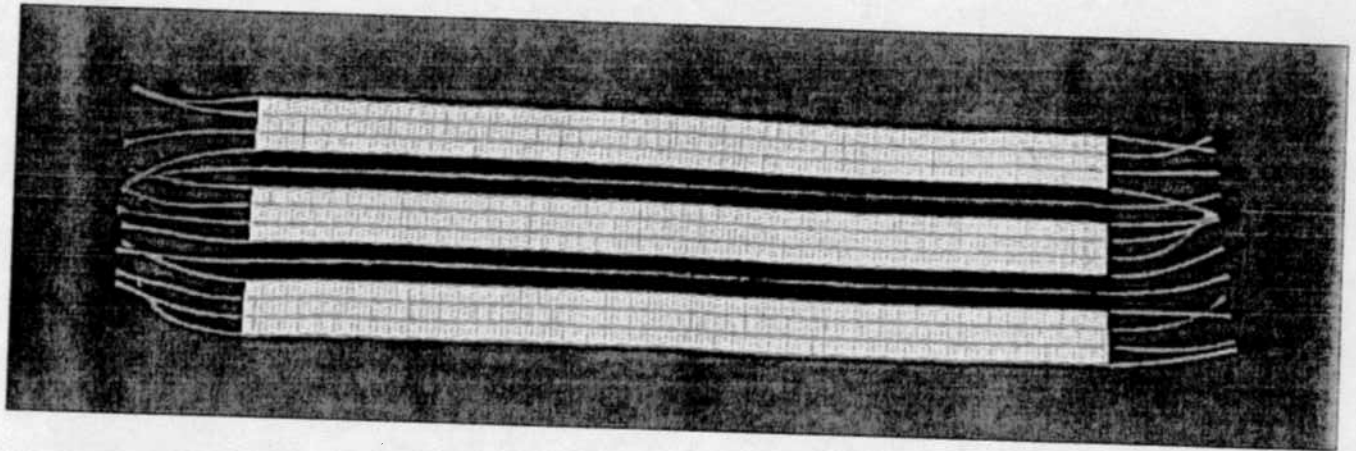
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INTRODUCTION

FACT SHEETS

**Indian Nations Leaders Meeting
Seneca Nation of Indians ~ Allegany Territory
Salamanca, NY
July 20 – 21, 2011**

DEPP'S Indian Program staff contacted the Indian Nations to determine what topics each Nation intends to discuss with Region 2's senior managers during the individual meeting sessions on Wednesday July 20, 2011. Limited topics were presented to the DEPP Indian Program staff. Fact sheets for most of the suggested topics are included in this package; fact sheets on additional topics identified by the EPA have also been included.



The Two Row Wampum treaty, also known as Guswhenta or Kaswehnta, is an agreement made between representatives of the Five Nations of the Iroquois (Haudenosaunee) and representatives of the Dutch government in 1613 in what is now upstate New York. The treaty is considered by the Haudenosaunee to be the basis of all of their subsequent treaties with European and North American governments.

The 1613 treaty was recorded by the Haudenosaunee in a wampum belt known as the Two Row Wampum. The pattern of the belt consists of two rows of purple wampum beads against a background of white beads. The purple beads signify the courses of two vessels -- a Haudenosaunee canoe and a European ship -- traveling down the river of life together, parallel but never touching. The three white stripes denote peace and friendship. This wampum records the meaning of the agreement, which declared peaceful coexistence between the Haudenosaunee and Dutch settlers in the area.

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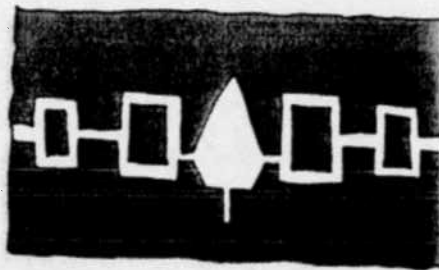


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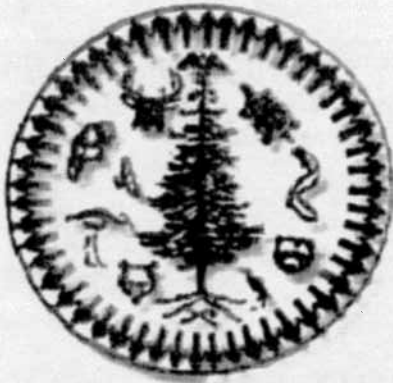
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TUSCARORA NATION FACT SHEETS

- 1 – Tonawanda Seneca and Tuscarora UST Facilities (DECA)
- 2 – Tee Pee Junkyard Dump site (DEPP)



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Fact Sheet: Tonawanda-Seneca & Tuscarora UST Facilities
Lead Division: DECA
Applicability: Tuscarora Nation

Issue: USTs at both of these Nations have not been inspected and are out of compliance with the 2005 Energy Policy Act. The Nation's traditional leadership desires a fuel ban but EPA's ability to impose a ban is based on "inspection findings" and currently, EPA does not have sufficient evidence to presume the facilities are out of compliance.

Background: The Energy Act was passed in August 2005 with specific requirements for the inspection of all USTs nationwide. All Tribes nationwide except Tonawanda and Tuscarora conducted inspections under their own authorities and supplied EPA with the compliance status of the USTs or welcomed EPA inspections.

After consultation with both Nation's leadership, EPA in April 2007 agreed to sample private drinking water sources near UST operations. It was hoped that if the USTs were out of compliance, evidence might be gathered from the sampling that would then induce the Nation's leadership toward inspections.

The sampling was conducted in June of 2008. The results were:

- Tonawanda: no petroleum impacts from the wells sampled, and
- Tuscarora: Three (3) different petroleum constituents (benzene, lead and MTBE) were found in three separate wells at Tuscarora. The results were *below* MCL levels.

In addition to the sampling, in September 2005, EPA wrote the petroleum distributors advising them that should future compliance issues be discerned, they may be liable. EPA had hoped this pressure would help ensure the facilities were compliant. The petroleum distributors did not respond to EPA's letters.

EPA also provided training for both Nation's environmental staff on UST operations and inspection procedures.

EPA and both Nations at the annual meetings in 2009 and 2010 discussed how to address the facilities. After the 2009 discussion, EPA provided an Enforcement Flowchart detailing EPA's normal procedures for accessing compliance. Then at the conclusion of the 2010 discussion, Tuscarora agreed to EPA sending out Information Request letters, the first step in the Enforcement Flowchart.

Current Status: The facilities compliance status remains undetermined and the Nation's leadership still wish for them to be shut down but has not welcomed US EPA inspectors.

EPA issued RCRA Information Request letters to all UST facilities on the Tuscarora Nation. In the 3rd quarter of FY11, the facilities now fall into three categories:

- 1) Responded—but have no USTs, only ASTs. [3 Facilities.]
- 2) Responded—but responses are incomplete & demonstrate that the operators attempted to meet regulatory requirements after receipt of EPA's letter. Full compliance status is therefore still undetermined. [5 Facilities, 2 different operators.]
- 3) Non-response. Four facilities have not responded at all, one facility responded with allegations of past EPA misconduct and did not respond to the regulatory questions. [5 Facilities.]

ORC has assigned an attorney to work with DECA on handling categories 2 and 3.

We discussed the current status with Tuscarora's Environmental Department on June 8. Tuscarora asked to review follow up correspondence prior to issuance per our agreed "consultation-enforcement process".

Recommendation:

Tuscarora

- Per the Enforcement Flowchart EPA provided, the next step after the IRLs is on-site inspections based on the incomplete findings we have thus far.

Tonawanda-Seneca

- Determine if Tonawanda is prepared to have letters issued to the facilities on their land.

Fact Sheet: Tee Pee Junkyard Dump Site
Lead Division: DEPP
Applicability: Tuscarora Nation

Background:

On August 24, 2000, a visual characterization was conducted on the site by EPA contractor. The investigation included excavation of selected sites, documentation with photos and text as well as previous site history. The excavation revealed a sub strata of unidentified white material. The characterization did not allow for testing for hazardous waste determination. The final report was delivered January, 2001.

Sometime between 2000 and the present, a cleanup effort was conducted and included removal of much of the household and solid waste materials originally observed. In addition, surface ground cover had been skimmed off, exposing the white material previously observed below ground surface.

In August, 2007, DEPP-RPB staff visited the site with representatives of the Tuscarora Indian Nation and confirmed the current site condition, after which they contacted Joseph Rotola, Chief of the Removal Action Branch in Edison to discuss potential next steps to identify the now exposed material. Subsequently, the Tuscarora Indian Nation sent a formal letter of request to the Removal Action Branch dated October 8, 2007, for an evaluation for potential removal action.

On November 15, 2007, staff from the Removal Action Branch visited the site and performed radioactive testing and collected samples for further assessment activities. The Removal Action Branch prepared a report of its findings dated May 07, 2008, a copy of which was sent to Chief Leo R. Henry. The report described site assessment activities, and observations with special attention to the white unknown material. A full spectrum of analytical parameters was applied including, but not limited to, the Toxicity Characteristic Leachate Procedure (TCLP). Analysis of the white material indicated it was mostly calcium carbonate and that no CERCLA removal action was warranted.

RPB and representatives of the Tuscarora Environment Program discussed the report findings in Sept 08. Although the Tuscarora Nation representatives were disappointed that no removal action would be taken, RPB encouraged them to respond to the next available interagency solid waste assistance solicitation which can provide funding for open dump clean up.

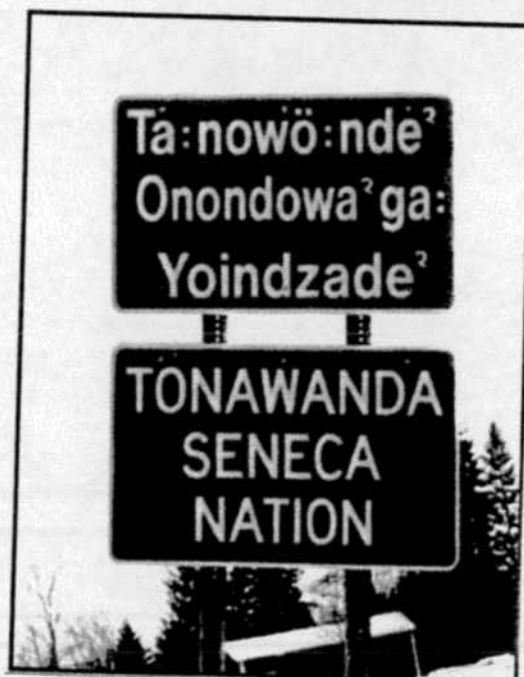
Status:

DEPP-RPB intends to place its Tribal Reserve funds for 2011 (\$14,000) in the existing GAP grant to apply to the clean up process but the full clean-up will cost \$35,000. In order to come up with the difference (\$21,000), RPB has advised the Tuscarora Nation of the recent solicitation for interagency solid waste assistance funding. The deadline for application is July 22, 2011. RPB sent the solicitation notice immediately upon its release followed by two phone conversations to encourage application and offer assistance as appropriate. The application, if made, will cover removal of calcium carbonate (remediation) as well as regrading/reseeding of the site (restoration).

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TONAWANDA SENECA NATION FACT SHEETS

- 1 – Tonawanda Seneca and Tuscarora UST Facilities (DECA)
(See Fact Sheet titled "Tonawanda Seneca and Tuscarora UST Facilities" on p.11-12)
- 2 – Tonawanda Creek Microbial Trackdown (DEPP)
- 3 – Open Dumping Near Tonawanda Seneca Nation Territory (DEPP)



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Fact Sheet: Tonawanda Creek Microbial Trackdown
Lead Division: DEPP
Applicability: Tonawanda Seneca Nation

Tonawanda Seneca Nation - Tonawanda Creek Microbial Trackdown

Status: A data interpretation and assessment of the Summer 2009 bacterial trackdown sampling study for the Tonawanda Seneca Nation (TSN) was completed and submitted to EPA R2 by Donald Rowe, PhD, Director of the Office of Public Health Practice at SUNY Buffalo. We had a conference call with the TSN at their request on 3/31/10 to discuss the final sampling results and data analysis report. EPA R2 (Mike Shaw, Grant Jonathan), TSN (Linda Logan, Mardell Sundown, Chief Hill), and Dr. Rowe participated on the call. Dr. Rowe gave an overview of the report results, generalizations/conclusions, and recommendations. The TSN was generally happy with the report and Dr. Rowe's responses to their questions and concerns.

We also encouraged the TSN to share the report results and their concerns with the newly formed Tonawanda Creek Watershed Protection Committee. The TSN is interested in conducting a more extensive bacteriological sampling project in the creek to build on the previous limited sampling study.

At the same time, we suggested that since there is clear evidence of human bacterial contamination occurring in the creek on certain sampling days, a comprehensive septic system survey could be conducted in the sampling project area. The TSN was advised that Dr. Rowe and EPA R2 continues to be available to provide technical advice and assistance on these matters where needed.

As far as the State is concerned, we have conveyed our concerns to NYSDEC based on the findings of the study and the creek segment is now listed in the revised 303d impaired waterbodies list. This should now bring attention to the State to get support on this matter in need of follow up action. The TSN was advised that the best technical resource for small residential septic systems would be the Genesee County Health Dept. since they have delegated lead oversight authority from NYSDOH.

Update: At the last Nation leaders meeting, the TSN informed DEPP-WMB that they have begun a septic system survey in consultation with the Genesee County Health Dept. and the Tonawanda Creek Watershed Committee working group. The NYSDEC informed DEPP-WMB that they are available to attend the Tonawanda Creek Watershed Committee meetings, by request, as a technical resource on matters under their authority (e.g. permitted municipal and commercial wastewater dischargers). The NYSDEC contact person would be Don Zelazny, NYSDEC Region 9 @ (716) 851-7220.

Fact Sheet: **Open Dumping Near Tonawanda Seneca Territory**
Lead Division: **DEPP**
Applicability: **Tonawanda Seneca Nation**

Background:

The Tonawanda territory is at the common point of Erie, Niagara, and Genesee Counties, and at its northeast extremity is very close to Orleans County. On June 25, 2009 we met with Tonawanda Seneca and Cayuga Nation representatives. Tonawanda Seneca Nation still suffers from open dumping by non-members at three (and sometimes more) locations on the boundary of the Tonawanda territory. Meeting participants agreed that cooperation is necessary among Tonawanda government, the governments of the three counties (Erie, Niagara and Genesee) whose boundaries come together in Tonawanda territory, the neighboring towns within those counties, and the state.

Following that meeting, the Region 2 Solid Waste Tribal Circuit Rider called representatives from neighboring local governments to determine the solid waste management practices of towns that surround the Tonawanda Seneca territory. The purpose was to see which local citizenry had an incentive to dump their trash illegally, rather than have it collected in an approved way.

The towns with lack of solid waste arrangements, present the greatest incentives to open dumping. These are:

Alabama, Genesee County, an abutter to the Tonawanda Seneca reservation;
Pembroke, Genesee County, also an abutter;
Clarence, Erie County, about four miles west of the west side of the reservation;
Oakfield, Genesee County, about seven miles east of the east side of the reservation

None of the named towns cover solid waste collection or disposal through property taxes. If a household wants curbside collection, an individual arrangement must be made with a hauler, generally about \$150 per year for weekly pickup, which is an incentive for residents to engage in illegal dumping.

RPB staff consulted with representatives from the Tonawanda Seneca Nation (TSN) to determine next steps who stated that their first priority would be to deal with the Brunning Road site.

RPB staff contacted National Grid which abuts the TSN reservation. National Grid reps visited the site on July 9, 2010 and committed by phone conversation to clean up not only their property, but to also clean out any trash that had migrated onto TSN property.

A second conference call was held at the end of July to address prevention strategies and enforcement roles and responsibilities. The attendees for that call included the State Police, Erie County Sheriff's office, representatives from the Town of Newstead, National Grid, and TSN.

Status:

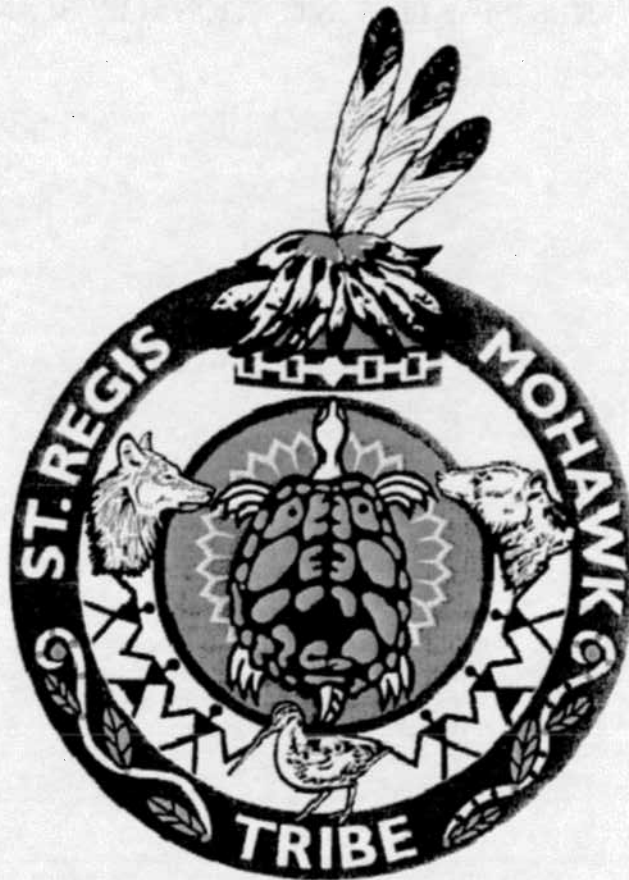
On August 19, 2011, National Grid removed illegally deposited waste from their right of way which was adjacent to the Tonawanda Seneca Nation (TSN) reservation. In addition, waste that had migrated from the right of way onto TSN property was removed in consultation with TSN representatives. The areas from which waste was removed have been back filled, seeded, and mulched. A chain link fence, gates, and appropriate signage was installed.

In addition, National Grid and the various participating state and local law enforcement officials committed to sharing evidence of dumping in the general area.

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ST. REGIS MOHAWK TRIBE FACT SHEETS

- 1 – Alcoa Fact Sheet (Grasse River) (ERRD)
- 2 – General Motors (GM) Massena Superfund Site (ERRD)
- 3 – Reynolds Metals Company Site (RMC) (Alcoa East) (ERRD)
- 4 – St. Regis Mohawk Tribe – Great Lakes Restoration Initiative Funding (DEPP)



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Fact Sheet: Alcoa Fact Sheet (Grasse River)
Lead Division: ERRD (updated June 2011)
Applicability: St. Regis Mohawk Tribe (SRMT)

The Grasse River site (a.k.a. Alcoa Aggregation), is located along the northern boundary of New York State in the Town and Village of Massena, and encompasses approximately 7 miles of the lower Grasse River from Massena to the confluence of the St. Lawrence River. The site is contaminated with PCBs and the highest levels of surface sediment contamination which were found in an area immediately adjacent to Alcoa's SPDES Outfall 001 were addressed by the non-time critical removal action in 1995.

In 2001, as part of the remedial investigation and feasibility study, Alcoa had conducted a Capping Pilot Study (CPS) in the lower Grasse River. During the post-placement monitoring, the technical team discovered that the ice jam event of 2003 had caused some sediment scouring in the river, including erosion to parts of the cap material and underlying native sediment. Prior to the 2003 ice jam event, the occurrence of scouring due to severe ice jam events was not known and therefore the CPS was not designed to handle such great force.

Based on the updated conceptual site model, Alcoa carried out a Remedial Options Pilot Study (ROPS) in 2005. The ROPS Work Plan included the following five components: armored capping, constructing a temporary ice control structure (ICS), dredging, near shore dredging and capping, and extensive monitoring for all components. All of the components were implemented except the ICS component due to community concerns related to the proposed location of the structure.

In late 2005, after the ROPS, Alcoa submitted the *Preliminary Engineering Analysis and Siting Evaluation for Ice Management on the Grasse River* which described options to control the ice using non-structural ice control, as well as ice control structure at 8 locations. In 2007 Alcoa implemented an ice breaking demonstration project, one of the non-structural ice control methods identified. Based on the results, EPA decided not to pursue mechanical ice breaking at the Grasse River site as an interim ice control measure for the future.

In 2010, Alcoa submitted a draft Analysis of Alternatives (A of A; similar to a Feasibility Study at an NPL site). We have been discussing this document with DEC, Alcoa and the St. Regis Mohawk Tribe (which has extensive cultural ties to the Grasse River). Senior program managers from EPA and DEC met by video conference in February, March, and May 2011. The scheduled meeting in June was cancelled by DEC. EPA is awaiting DEC's evaluation of electronic database manipulation and potential request that additional remedial alternatives be prepared. DEC Superfund staff appear to be working out differences of opinion with their Fish and Wildlife staff regarding alternatives for the A of A. There is substantial agreement between EPA and DEC on the conceptual site model (CSM), and critical issues needing further evaluation prior to finalizing the A of A. EPA's goal to have the A of A completed and a Proposed Plan ready for issuance by the end of FY-2011 is quite unlikely at this time due to delays in finalizing the A of A.

Continued Consultation with SRMT:

In 2010, EPA, SRMT and respective legal counsels held numerous conference calls and met to discuss the question of whether the SRMT sediment standard for PCBs of 0.1 mg/kg is an ARAR for the Grasse River site remediation. After much consultation, EPA determined on September 16, 2010 that the SRMT sediment standard will not apply as ARARs, however, it will be considered as a TBC. Also, the SRMT subsistence fisherman consumption rate will be used to calculate additional preliminary remediation goal evaluate of SRMT anglers human health risks.

Schedule:

Full agencies comments compilation can take place once a decision is made regarding the NYS DEC's request to EPA on additional alternatives to the existing 14 alternatives in the draft AofA. Anticipate issuing a Proposed Plan and ROD in FY 2012.

Fact Sheet: General Motors (GM) Massena Superfund Site
Lead Division: ERRD
Applicability: St. Regis Mohawk Tribe (SRMT)

Background Information, if Necessary

There are approximately 4,000 St. Regis Mohawks living on land located adjacent to the GM Site in Massena, NY. Tribal property has been contaminated by the GM Site.

Significant Current Issue

GM's recent bankruptcy has led to Tribal concerns regarding both the short and long-term status of the GM Massena Site. In the short term, the Tribe seeks to out to work as many Mohawks as possible during the cleanup. To that end, the Region is working with Headquarters on the Superfund Job Training Initiative to ensure the Mohawk and local Massena residents can obtain remediation jobs.

During the GM plant demolition which is currently underway, the level of Mohawk employment has been as high as 16% with close to 30% of the labor force drawn from local (Tribal and Town) sources. A serious impediment to Tribal hiring is that some Tribal members prefer not to join Unions and much of the work is done primarily by contractors that operate under collective bargaining agreements.

The longer term issue of ownership of the Site. New Chiefs, Randy Hart and Mark Garrow have made it clear that they believe the Site sits on Tribal land and should rightfully be returned to the Tribe after cleanup has been completed.

The Chiefs have also indicated that they remain dissatisfied with the containment remedy selected for the 12-acre Industrial Landfill. The Tribe has long been opposed to the EPA's selected containment remedy for the Industrial Landfill (which sits adjacent to the Tribal border) maintaining that the unlined landfill, which contains high concentrations of PCBs and other chemicals, should be removed from the Site. In January 2009, Chief Jim Ransom met with EPA and agreed to support the permanent containment of the landfill if the remedy also included a provision for the creation of a 150 foot buffer zone along the Tribal border and the St. Lawrence River. This buffer zone will allow for a larger ground water monitoring zone between the landfill and Tribal property and would provide a for a greater response time if contaminants in the buffer zone were found at increasing levels. This buffer zone is expected to be in construction in late 2012.

Fact Sheet: Reynolds Metals Company Site (RMC) (Alcoa East)
Lead Division: ERRD
Applicability: St. Regis Mohawk Tribe (SRMT)

Background:

The Reynolds Metals Company (RMC) site is an active aluminum production plant located on 1,600 acres in the Town of Massena, St. Lawrence County, New York. The RMC facility is bordered on the north by the Grasse and St. Lawrence Rivers, and on the south by the Raquette River. The plant is located off Route 37 near the Massena-Cornwall International Bridge directly upriver of the General Motors (Central Foundry Division) Superfund site. St. Regis Mohawk Tribe (SRMT) lands known as Akwesasne is located within two miles of the site.

The remediation at the RMC site began with the dredging of PCB-contaminated sediments in Spring 2001. While a large volume of contaminated sediments was successfully removed from the St. Lawrence River, PCB-contaminated sediments that could not be successfully dredged to the action level after repeated dredge passes were covered with the first layer of a three-layer cap. A final cap was placed in this area during the 2009 construction season.

Post-remediation sampling performed during Summer 2003 in areas outside the cap identified sixty-one dredging cells which required further sampling to determine the full extent of the remaining PAH contamination. During Summer 2004, these areas were sampled. The work was overseen by an EPA oversight contractor and the SRMT. Split samples were taken by both entities. Preliminary sample results show that nine cells contain PAHs above the 10 ppm action level set forth in the Record of Decision. A letter was sent to Alcoa in August 2005 in which Alcoa was asked to place a PAH-cap on a number of PAH-contaminated cells and to dredge other PAH-contaminated cells. Alcoa provided additional evidence to show that additional dredging may not reduce the contamination in the dredged cells to below the action level. Additional post-remedial sampling for PAHs was performed during Summer 2006 in the remaining 60 cells previously not sampled for PAHs. Preliminary data shows that almost one third of the 60 cells contained PAHs above the action level. A Submerged Aquatic Vegetation (SAV) study was performed by Alcoa during summer 2007 and revealed widespread vegetation growing in all areas of the site except the PCB cap. During the 2009 construction season, Alcoa capped PAH affected cells as directed by EPA and placed a six inch habitat layer on each cap. Four cells were also excavated from the shoreline prior to capping. The PCB-cap was also completed. The capped cells will be monitored on an annual basis. An ESD was released in December 2008. Monitoring in 2010 showed that the caps were stable and intact and that the SAV was re-establishing itself.

Discussion:

There are no issues that the SRMT is likely to raise at this time.

Recommendations:

N/A

Fact Sheet: St. Regis Mohawk Tribe – Great Lakes Restoration Initiative
Funding
Lead Division: DEPP
Applicability: St. Regis Mohawk Tribe (SRMT)

SRMT projects awarded under the FY10 EPA RFP.

- 1) Sturgeon rehabilitation. SRMT will design and implement a lake sturgeon rehabilitation project in the St. Lawrence River (\$732,107; PO Barbara Belasco).
- 2) St. Lawrence River AOC, BUI advancement. SRMT will conduct assessments of beneficial use impairments in the St. Lawrence River Area of Concern, such as the status of fish tumors, fish and wildlife habitat and fish and wildlife populations, and benthos. These assessments will assist the remedial action committee to determine if these BUIs can be delisted for the AOC, in accordance with the goals of the GLRI to delist BUIs in AOCs, and ultimately the AOC (\$1,229,415; PO Barbara Belasco).

In addition, the following project selected under the RFP will directly support the SRMT:

- 3) Enhancing SRMT Fish Consumption Advisory Communication (NY State Department of Health). DOH will collaborate with the SRMT to update their fish advisories and to develop enhanced ways to communicate benefits and risks of consuming fish caught from the St. Lawrence River Basin. The project will engage the community in the design and development of new fish advisory communications, increase awareness and understanding of advisory messages, and maintain and respect traditional tribal customs and beliefs. (\$500,000; PO Liz VanRabenswaay)
- 4) In FY10/11 SRMT was offered two year funding for a non-competitive GLRI tribal capacity grant to support their involvement in the enhanced activities under the GLRI, such as the St. Lawrence River Remedial Action Plan for the Area of Concern, and the Lake Ontario Lakewide Management Plan (\$150,000; PO Liz Van Rabenswaay).

Brief Background on the GLRI

The President's 2010 Budget provided \$475 million in EPA's budget for a new Environmental Protection Agency-led, interagency Great Lakes restoration initiative, and is targeting the most significant problems in the region, including invasive aquatic species, non-point source pollution, and contaminated sediment. In FY11 the budget provided \$300 million. In response to the RFA, 22 projects from NYS were selected for award. SRMT did not submit any applications in FY11. However, the tribal capacity grant will continue thru FY11. Budgets in the future are uncertain. Major goals of any future RFP for GLRI funding for AOCs will continue to be the delisting of BUIs and the delisting of the AOC.

Brief Background on the St. Lawrence River Area of Concern (AOC)

The St. Lawrence River Massena, NY, AOC consists of portions of the St. Lawrence, Raquette, Grasse and St. Regis rivers. The AOC is partially in SRMT land.

R2 DEPP coordinates the management of the St. Lawrence River AOC, under the umbrella of the GLNPO program, which includes assessment of the beneficial use impairments (BUIs); remediation of impaired BUIs; delisting BUIs; final delisting of the AOC.

The St. Lawrence River AOC is a binational AOC- the Canadian AOC is in Cornwall, Ontario.

There are 3 Superfund sites in the AOC, coordinated by ERRD.

Great Lakes Water Quality Agreement (GLWQA)

EPA Great Lakes National Program Office consulted specifically with NY Indian Nations in-person on March 1, 2011, with a follow up call later that month, and an in-person meeting with SRMT on June 9, 2011. The consultations were concluded prior to the tribal consultation policy being finalized. The Nations gave very good verbal and written input, which was considered seriously in developing the US position for negotiations with Canada on the revised GLWQA.

ONEIDA INDIAN NATION FACT SHEETS

- 1 – Oneida Memorandum of Agreement on UST Matters (DECA)
- 2 – Sustainability Program (DEPP)



because the open market permit was issued in the same period
question were not free from taxation.
Sherrill was decided in the middle of the Part 71 permit for the casino. One side
Turning Stone Casino Resort. The question became whether ELA or NYS had jurisdiction
over the permit issued upon the Sherrill case. In response to comments we
distinguished the permitting matter from the taxation issue within Sherrill, asserted
jurisdiction + issued the Part 71 permit for the Casino-Resort. ~~The~~
response was prepared with OGC input + I believe has been used in other Part 71

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has ~~been~~ printing almost ~~in~~ ⁱⁿ other regions

Fact Sheet: Oneida Memorandum of Agreement on UST Matters
Lead Division: DECA
Applicability: Oneida Indian Nation

Issue: EPA Region 2 and the Oneida Nation have been negotiating a Memorandum of Agreement (MOA) on UST matters since December 2007.

Background: EPA Region 2 proposed entering into an MOA with Oneida due to their acquisition of several commercial UST facilities. The first drafts of the MOA were based on an existing 1998 MOA with the Seneca Nation of New York. Internally, DECA and ORC reviewed the MOA twice. At the December 2008 EPA-All Nations meeting, Oneida stated they were satisfied with the document and willing to sign it as final.

However, EPA HQ issued new guidance on entering into MOU/MOAs with Indian Nations in August 2008. The guidance requires EPA HQ review of any such proposed documents. ORC sent the document to EPA HQ in August 2008. HQ OGC requested changes.

Subsequent to that in 2009 and 2010, the MOA went through further revisions by Region 2 and OGC. Oneida at one point withdrew from the negotiations because the Oneida's leader, Ray Halbritter, did not appreciate EPA's changes to the document. But the Nation came back to the table in February 2010.

Current Status: Oneida met with EPA at 290 Broadway on May 11, 2010. We discussed the following outstanding legal issues in the MOA –

- (1) legal reciprocity wherein Oneida wanted to mirror the following EPA language “As required by the Anti-Deficiency Act, 31 U.S.C. 1341 and 1342, all commitments made by EPA in this Agreement are subject to the availability of appropriated funds. Nothing in this Agreement, in and of itself, obligates EPA to expend appropriations or to enter into any contract, assistance agreement, interagency agreement, or incur other financial obligations that would be inconsistent with budget priorities; and
- (2) EPA-HQ acknowledging and counting Oneida UST inspections for Energy Policy Act of 2005 (EPAAct) compliance.

R2-ORC consulted with OGC and OUST on the two items. It was determined the legal reciprocity language was not appropriate for the Nation as the regulated entity but HQ agreed to count Oneida's UST inspections for EPAAct compliance. R2 provided an executable MOA to the Oneida Nation in October 2010. The follow up calls (January 10 and March 14, 2011) were cancelled by Oneida. The MOA is still not executed.

EPA is required to report on all USTs, the required information includes inspection findings, compliance rates and information on new releases. If the MOA is not executed EPA has only two authorized ways to gather and report the required information to EPA-HQ-

- (1) conduct inspections ourselves or
- (2) Oneida UST inspectors receive federal credentials. This second option can often be a lengthy administrative process taking up to one year.

Recommendation:

- Ask Oneida if they still want to execute the MOA. If not, what other process is preferable? EPA inspections or federal credentials for an Oneida inspector?
- IF they are supportive of the MOA, --what two to three dates can they commit to for finalizing the agreement?

Fact Sheet:	Sustainability Program
Lead Division:	DEPP
Applicability:	Oneida Indian Nation

The Oneida Indian Nation (OIN) has expressed an interest in designing and implementing a Sustainability Program for its facilities, such as its casino (which employs 5,000 employees), golf course, twelve restaurants, fifteen convenience stores, marina, and other facilities. The Nation is specifically interested in beginning this longer-term goal by managing its solid waste (paper, plastics, glass, metals).

DEPP-DO staff scheduled a conference call with the Nation which was to be followed by a face-to-face meeting for RCRA solid waste team to meet with OIN sustainability team at Oneida, March 3rd, 2011. The Nation postponed the meeting. We are waiting for the OIN to provide a date to reschedule this meeting.

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SENECA NATION OF INDIANS FACT SHEETS

- 1 – Seneca Nation of Indians (SNI) development of a Proposed Study Plan for the relicensing of the Seneca Pumped Storage Project (DEPP)
- 2 – Seneca Wastewater Permitting Issue (DEPP)
- 3 – Seneca Nation UST Grant and UST MOA (DECA)
- 4 – Water & Wastewater Systems Background Information (DEPP)
- 5 – Abandoned Mobile Home Project (DEPP)
- 6 – Waste Transfer Station (DEPP)



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Fact Sheet: Seneca Nation of Indians (SNI) development of a Proposed Study Plan for the relicensing of the Seneca Pumped Storage Project
Lead Division: DEPP
Applicability: Seneca Nation of Indians

HISTORY OF THE SENECA PROJECT

The Allegheny Basin has been the homeland of the Seneca Nation for centuries. The Seneca people established communities in the Basin and have used the river and its resources for fishing, hunting, gathering, and transportation. The river and all its resources are integrally related to Seneca culture, economy, and way of life. This relationship formed the foundation for the Seneca Nation's original treaties with the United States, which remain the supreme law of the land today pursuant to the U.S. Constitution. A history of the Seneca Project, therefore, must be placed in the context of this relationship and the events that impacted the Seneca Nation's ability to exercise its sovereign authority over the Allegheny River.

The Seneca Project's history is inextricably linked to the U.S. Army Corps of Engineers' Kinzua Dam, which impounds the river in Allegheny Reservoir, the lower reservoir for operation of the Seneca Project. Two major economic concerns dominated the public conversations when Kinzua Dam was proposed: flood risks in Pittsburgh (downstream from Seneca Territory), and water pollution from human and industrial sewage and acid-laden discharges out of coal mines in Pennsylvania. Badly deteriorating water quality and series of flood events in the Allegheny River Basin in the early 20th century prompted government agencies and a citizen group to explore flood control and water supply projects throughout the Basin, including Kinzua Dam.

BACKGROUND

The Seneca Pumped Storage Project ("Seneca Project"), Federal Energy Regulatory Commission (FERC) Docket Number 2280, is a pumped storage hydropower generation facility located along the Allegheny River in the Allegany Indian Reservation, southern New York, and northern Pennsylvania.

The Seneca Project has an authorized production capacity of 450 megawatts (MW), generating electricity with the water of the Allegheny River by making use of Kinzua Dam and its Allegheny Reservoir impoundment. The Project consists of a lower reservoir (the Allegheny Reservoir), an upper reservoir, two pump-turbine generator units, one conventional turbine-generator unit, associated water intakes, conduits, and discharge facilities, a powerhouse, transmission lines, and the lands affected by these facilities.

The Federal Power Commission (replaced by the Federal Energy Regulation Commission [FERC] in 1977) issued the original license to operate the Seneca Project on December 28, 1965. The current 50-year license for the Seneca Project will expire on November 30, 2015. The Seneca Nation submitted its Notification of Intent and Pre-Application Document, the first two steps in the regulatory process of applying for the license to operate the Seneca Project upon the expiration of the original license. This website will act as a channel of communication between the Seneca Nation as an applicant for the license and the interested parties and agencies as participants in the relicensing process.

PROPOSED STUDY PLAN OF THE SENECA NATION OF INDIANS

The Seneca Nation of Indians (SNI) has developed a Proposed Study Plan for the relicensing of the Seneca Pumped Storage Project ("Project") (FERC, Docket No. P-13889). The Project, as currently exists, is a 451-megawatt (MW) pumped storage project that provides peaking power. SNI will operate the Project so as to:

- (1) better serve the needs of the regional power system and the larger public interest,
- (2) adapt the Project to support the rapidly increasing demands for renewable energy, and
- (3) conserve and protect environmental and cultural resources of the Allegheny River and the Allegheny Reservoir in the public interest.

To this end, SNI is proposing a suite of studies to understand how to maximize the benefit of the interrelationship among the Allegheny River, the Allegheny Reservoir, and the existing facilities that are part of the current Kinzua Pumped Storage Project licensed under FERC Docket No. P-2280. These studies will investigate the potential for additional generation capacity using the outlet works of Kinzua Dam and enhancing the current facilities and operations of the Pumped Storage Project. SNI has filed for a preliminary permit to study additional capacity at Kinzua Dam, accepted by FERC, under Docket No. P-14100. While the preliminary permit is filed under a separate docket, the two generating facilities are integrally linked and would use the same resources. Accordingly, FERC should consider hydropower additions at Kinzua Dam as upgrades to the Seneca Project.

SNI filed its Pre-Application Document (PAD) on November 30, 2010; SNI's PAD contains a vast amount of information on the current knowledge of the affected environment and current operations of the Project. FERC noticed the filing of SNI'S PAD and that of FirstEnergy Generation Corp.'s (FirstEnergy) competing PAD and issued Scoping Document 1 (SD1) on January 28, 2011. Scoping meetings pursuant to the National Environmental Policy Act (NEPA) and a partial site visit were held on February 23 and 24 in Warren, PA and in Salamanca, on the SNI's Allegany Territory. FERC and both applicants filed comments on the PADs and SD1. In addition, numerous stakeholders filed comments on these documents. Pertinent documents can be found on the Seneca Nation of Indians relicensing website:

<http://www.senecaproject.com/Documents.html>.

The Seneca Nation of Indians fully intends to characterize the impacts of the current Project, as well as any changes determined in studies of enhanced generation. Accordingly, the Seneca Nation of Indians has proposed a number of studies to address gaps in knowledge about Allegheny Basin resources.

NOTE: SNI also has an interest in operating a hydroelectric power project at Kinzua Dam in Pennsylvania. That potential project is subject to separate FERC licensing action.

Fact Sheet: Seneca Wastewater Permitting Issue
Lead Division: DEPP
Applicability: Seneca Nation of Indians

BACKGROUND:

The CWA requires that facilities that discharge into waters of the United States have National Pollutant Discharge Elimination System (NPDES) permits. There are two small wastewater treatment facilities located in the Seneca's Cattaraugus Territory (Thomas Indian School and Irving) which have been operating without NPDES permits for a number of years. At one time these facilities were permitted through New York's State Pollutant Discharge Elimination System (SPDES), but are currently not permitted by any authority. EPA is the permitting authority for dischargers in the Indian Nations. As such, we are obligated to request that the Nation apply for a permit. The Seneca Nation of Indians (SNI) is opposed to obtaining an NPDES permit on the basis of their sovereign status. At the past Annual Indian Nation Leaders meetings, EPA has expressed concern over the fact that these plants do not have permits to discharge. EPA has explained that this is inconsistent with the Clean Water Act and that the situation needs to be corrected. Both plants have an average daily flow of 24,000 gallons and an average daily peak flow of 40,000 gallons. A construction project upgrade was completed at the Irving Plant in 2005. The SNI are also in the process of upgrading and increasing the capacity of the Thomas Indian School. We have no knowledge as to the effluent quality discharged from either of these two existing facilities (in fact, the SNI have told EPA that they do not regularly monitor their discharges).

UPDATES/PROGRESS ON THE ISSUE:

On July 18, 2008, in a letter from EPA Regional Administrator Alan Steinberg to Maurice John, Sr., the President of the SNI, EPA stated that the Clean Water Act "requires that wastewater point sources must obtain a permit through NPDES regulatory program" and that "it is our hope to work with the Seneca Nation to make certain that all wastewater discharges in Seneca Territory are regulated and monitored to ensure protection of all water bodies both in Seneca Territory and beyond Seneca Territory borders." The letter stated that "we would also welcome the opportunity for Jeff Gratz to meet with the Seneca Nation of Indians Council with the intention of consulting and sharing ideas on a government-to-government basis."

EPA received no response to the July 18th letter. Adrian Stevens (of the SNI Environmental Department) reported to Christine Yost that SNI Attorney General Robert Porter had informed him that there could be no meeting at the time.

DEPP sent a formal CWA Section 308 enforceable "information request" letter (done in consultation and agreement with ORC and DECA) to the SNI on November 4, 2008. In this letter we requested information on all aspects of the wastewater treatment systems (type of treatment, effluent quality, who operates the facilities, specific location, etc.) including information on planned upgrades as well as plans for any additional wastewater treatment

systems on SNI land. This information was due to EPA within 30 days of receipt of the letter. The SNI did not respond in writing to the 308 letter, but did contact the Office of Regional Counsel by telephone on November 25, 2008 to notify Paul Simon that they would be willing to host a meeting in which the information would be shared.

A meeting took place on February 19, 2009 at the Seneca Nation between representatives from EPA Region 2 and the SNI. At the meeting, participants agreed that EPA would send a draft permit from which the Seneca might be able to model and develop a permit. Once the tribal permit is in effect, although the Nation does not wish to be a recipient of a U.S. EPA-issued NPDES permit, EPA will then issue a parallel CWA permit. Thereafter, EPA will negotiate an MOU with the Nation to establish the understanding and process necessary to ensure that the Seneca Nation and EPA can continue to work together productively and cooperatively to meet the requirements of the Clean Water Act.

CURRENT STATUS

EPA transmitted a draft permit to the SNI on August 27, 2009. In response, the Seneca sent two Nation issued permits, Irving and Thomas Indian School, to ORC on June 1, 2010. The permits were less stringent than should be required. DEPP provided comments to ORC which were transmitted to the SNI's new Attorney General Chris Karns on January 24, 2011. We requested that the Seneca re-evaluate the permits. In addition to the minimum requirements that the SNI should be sampling on a monthly basis at their outfalls to ensure that the plants meet applicable effluent limitations, the permits needed to be modified to meet secondary treatment standards. The Tribal Council approved the revised permits and Mr. Karns sent them to ORC on May 26, 2011. A preliminary review of the permits by DEPP indicates that EPA's recommendations were included in both permits. An EPA Circuit Rider may be available to provide technical assistance on sampling and sharing the analytical results with us. The Tribe's Chief Counsel, Chris Karns, has agreed to begin negotiating a Memorandum of Understanding with EPA that will ensure accountability for ongoing monitoring, compliance and enforcement.

June 14, 2011

Contact: Andrea Coats, DEPP/CWRB/NPDESS (212)637-3850

Fact Sheet: Seneca Nation UST Grant and UST MOA
Lead Division: DECA
Applicability: Seneca Nation of Indians

DECA: Seneca Nation UST Grant and UST MOA

Issue: R2 entered into an UST MOA with the Seneca Nation in 1998. The MOA should be amended or updated to bring it into agreement with new federal rules, regulations and other MOAs entered into by EPA with Indian Tribes. EPA originally mentioned this to the former Environmental Director Sylvia Patterson in 2007. Seneca's new Environmental Director, Anthony Memmo, and the current Legal Counsel may be more amenable to re-negotiation.

Background: Nationally Seneca has the second highest number of active USTs in Indian Country¹. EPA has not inspected Seneca UST facilities since the 1990s when attempts to enforce federal regulations were met with strong tribal and operator resistance.

In order to develop a tribal regulatory program, EPA in the 1990s and for the last three years has provided UST program funding to the Seneca Nation to implement a tribal UST program. The Seneca have tribal UST regulations² and maintain practices to oversee UST operations including frequent inspections and oversight of financial insurance mechanisms. Seneca also provides to EPA, through a grant condition, Semi-Annual UST and LUST performance measures which allows EPA to gauge overall operations compliance.

EPA R2 conducted a program review in May 2010 with the Seneca Nation Environmental Director-Anthony Memmo and UST Lead Inspector, Curtis Archer. Subsequent to EPA's review the two UST staff attended advanced UST inspector training.

Current Status: After attending advanced UST training, the UST inspectors conducted more rigid UST inspections. The inspectors increased scrutiny resulted in a more accurate accounting of Seneca's compliance rates which dropped to 52% (where the national tribal UST compliance rate is 67% and the State are at 68%).

Recommendation:

- EPA (DECA and ORC) discuss at the One to One meeting, our desire to update the existing MOA
- EPA should lead a general discussion on how to increase compliance by the UST operators.

¹ Report To Congress On Implementing And Enforcing The Underground Storage Tank Program In Indian Country #1 is the Navajo Nation in Region 9 with 375 USTs, #2 is the Seneca Nation in R2 with 95 USTs.

² The Seneca regulations are an adoption of federal UST regulations by reference.

Fact Sheet: Water & Wastewater Systems Background Information
Lead Division: DEPP
Applicability: Seneca Nation of Indians

**SENECA NATION OF INDIANS
 WATER & WASTEWATER SYSTEMS
 BACKGROUND INFORMATION**

June 29, 2011

Public Water Systems	Territory	Source	Population
Cattaraugus Water System *	Cattaraugus	Purchase Surface Water & Ground Water	3,849
Jimersontown Water System	Allegany	Ground Water	407
Steamburg Water System	Allegany	Ground Water	219
Sullivan Hollow	Allegany	Ground Water	54
Shelton Trailer Park	Allegany	Ground Water	42

* Water is purchased from the Erie County Water Authority and water is sold to the Versailles Water District.

Water System Projects

Jimersontown & Steamburg Water System Improvements (\$928,852) - construction is close to complete.

Steamburg System - New Elevated Storage Tank (\$676,748) - construction is complete.

Cattaraugus System - Distribution System Improvements (\$349,000 - ARRA) - construction is complete. There is \$43,403 remaining. This funding will be used on the Cattaraugus System Richardson Road Pumphouse Improvement project.

Cattaraugus System - Richardson Road Pumphouse Improvements - (\$492,888) - award is pending.

* - Continuing PWSS Program funds are provided through a **Direct** Implementation Tribal Cooperative Agreement (DITCA) to **assist** EPA in PWSS Program implementation.

Wastewater Systems	Territory	Discharge
Thomas Indian System	Cattaraugus	Cattaraugus Creek
Irving System	Cattaraugus	Cattaraugus Creek
Jimersontown System	Allegany	Groundwater
Steamburg System	Allegany	Groundwater

Wastewater System Projects

Steamburg System - New Treatment Plant (\$376,000) - construction is close to complete. The new treatment plant is online.

Thomas Indian System - Newtown Community New Collection System (\$192,000) - construction is complete.

Thomas Indian System – Treatment Plant Replacement - (\$1,343,330 - ARRA) - construction is close to complete. The new plant could be online in August.

Irving System – Treatment Plant Improvements (\$55,000) - award is pending.

Jimersontown System - Sewer Vacuum Station Odor Control System (\$102,000) - award is pending.

Fact Sheet: Abandoned Mobile Home Project
Lead Division: DEPP
Applicability: Seneca Nation of Indians (but also all Indian Nations)

Background

EPA personnel first learned about the emerging problem of abandoned mobile homes during a 2007 visit to various sites on Seneca Nation, Tuscarora Nation, and Tonawanda lands.

Following these initial discussions, we did some research on mobile homes in general and abandoned units in particular. Convinced that this problem merited attention, we were able to secure some funding to work with a contractor to develop a best practices toolkit to determine the best management pathways for these units.

In August, 2009, demonstration of deconstruction of two mobile homes, inventory of material recovered, and construction of a tool shed using those materials took place at the Seneca Nation of Indian Cattaraugus Reservation. The entire process was recorded on film.

The video footage is the centerpiece of a toolkit that includes a written Best Management Practices document, a list of end of life processors and a bibliography of resources.

Status

The video footage has been through its first round of review by the Office of Multimedia/Office of External Affairs and Environmental Education. The recommended edits are underway. The final deliverable will include both the video and written documents in DVD format.

A condensed version of the video will be shared with the Region 2 Indian Nations at a session of the Tribal Leaders' Meeting on July 20.

Fact Sheet:	Waste Transfer Station
Lead Division:	DEPP
Applicability:	Seneca Nation of Indians

Background

In 2004, the Seneca Nation of Indians successfully applied for funding to develop and build a waste transfer station through an interagency solid waste assistance grant that is administered through EPA at Headquarters. The funding award was made through the Department of Agriculture (DOA) which has the authority to support construction activities. Due to administrative obstacles within DOA, the funding for this project was delayed for several years. During that time, the scope of the project was reduced (from two roll off containers to one) and the engineering plans altered accordingly.

As of the fall of 2009, design plans for the waste transfer station were approved by the DOA engineer and became part of the waste water treatment plant project which was soon to begin construction.

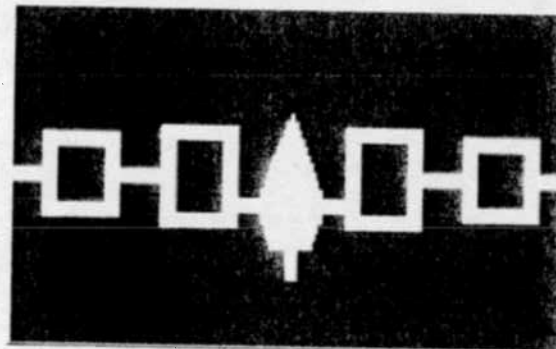
Status

On March 17, 2011, the SNI sent a letter to the DOA requesting an extension of the period of performance to complete the Waste Transfer Station project. However, the DOA deobligated the remaining funding since the time limit for obligation was imminent and the project had not progressed. In order for the project to go forward at this point, the SNI will need to find another source of funding.

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ONONDAGA NATION FACT SHEETS

- 1 – Onondaga Lake Superfund Update – 7/7/11 (ERRD)
- 2 – Onondaga Lake Partnership (OLP) Summary (DEPP)
- 3 – Onondaga Nation – Oliver Hill LUST Site Cleanup Status (DECA)
- 4 – Onondaga Lake Tributaries and Clean Water Act Section 303(d) list
– June 2011
- 5 – Tully Valley Mudboils Status Report (DEPP)



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Fact Sheet: Onondaga Lake Superfund Update – 7/7/11
Lead Division: ERRD
Applicability: Onondaga Nation

Lake Bottom Subsite

- Dredging of the lake is expected to begin in 2012. Construction of the engineered containment facility that will dewater and sequester the dredged material began in September 2010. Construction of the slurry pipeline which will transport dredged sediment to the containment facility and the water treatment plant which will treat effluent water from the sediment dewatering process is also underway. Designs which present the details associated with dredging productivity, sediment slurry conveyance from the lake to the containment facility, the in-lake sediment isolation cap, thin layer capping in the deeper areas of the lake, and habitat restoration are being advanced. The restoration of habitat is an integral component of the overall remedy for Onondaga Lake and is one of the most significant elements in the design for the dredging and capping activities specified for the lake. The planned habitat includes new wetlands, shoreline improvements, northern pike spawning areas, and a robust habitat layer for lake and shoreline areas which will be dredged and/or capped. Methylmercury concentrations in the lake's upper waters have decreased since 2004 as a result of implementation of Onondaga County Metropolitan Wastewater Treatment (METRO) upgrades in phosphorus treatment and year-round nitrification to treat ammonia. A three-year pilot study to demonstrate the ability to further inhibit release of methylmercury from lake sediment by adding small quantities of nitrate solution to overlying waters in the deep areas of the lake began in June 2011.

Honeywell Upland Subsites

- The LCP Bridge Street subsite, one of two primary sources of mercury entering the lake, has been cleaned up and restored. Construction of the water treatment facility and Containment Area at the LCP site to support the Geddes Brook Interim Remedial Measure (IRM) began in April and May 2011, respectively. Remedial Design of the selected remedies for Ninemile Creek and adjacent floodplains is in progress. Along the southern shore of the lake, a steel barrier wall and groundwater extraction system have been constructed to prevent contaminated groundwater from entering the lake from the Semet Residue Ponds and Willis Avenue Subsites. Construction of the barrier wall/groundwater collection system along the Wastebed B/Harbor Brook Subsite commenced in August 2010. More than 40,000 gallons of free product chlorinated benzenes have been removed to-date from subsurface soils at the Willis Avenue Subsite using on-site recovery wells and sent off-site for treatment/disposal. Treatability studies to evaluate onsite distillation for beneficial reuse and offsite thermal treatment/reuse options to address the Semet residue material are underway. A notice for a proposed IRM to address contaminated groundwater and seeps at the Wastebeds 1-8 Subsite was issued for public review and comment in December 2010.

Former GM Subsites and Salina Landfill Subsite

- On October 20, 2010, EPA, DOJ & the US Attorney for the SDNY along with 14 states and the St. Regis Mohawk Tribe announced that Motors Liquidation Corporation (MLC) has agreed to resolve its liabilities at 89 sites for approximately \$773 million. The agreement settles certain proofs of claim of the U.S., the states and the tribe in the GM Corporation bankruptcy matter relating to liabilities under CERCLA, RCRA and the Clean Air Act. Through the bankruptcy settlement, an Environmental Response Trust is being established in order to conduct, manage, and fund the cleanup at the 89 MLC-owned and unique non-owned sites. Two of the 89 sites are the Former-GM Inland Fisher Guide (IFG)/Ley Creek Deferred Media Subsite and the Ley Creek PCB Dredgings Subsite. Under the Trust, funding in the amounts of approximately \$31 million and \$2 million are being allocated for the GM IFG/Ley Creek Deferred Media and Ley Creek PCB Dredgings Subsites, respectively. The Lower Ley Creek, Salina Landfill, and Lake Bottom Subsites and the Old Ley Creek Channel area of concern were not included in this settlement, but the United States reserved its rights against MLC with respect to its general unsecured claims at these sites. Negotiations to resolve the general unsecured claims are underway.
- Remedial investigation/feasibility studies (RI/FSs) are currently underway for both the GM IFG Facility and the Ley Creek Deferred Media areas. Remediation at the Ley Creek PCB Dredgings Subsite was completed in 2000. The site is undergoing Long-Term Maintenance and Monitoring. An amended ROD for the Salina Landfill was signed in September 2010; Construction activities began in May 2011 and will continue for approximately four years. Waste consolidation from the landfill area south of Ley Creek to the landfill area on the northern side of Ley Creek is currently underway. EPA is currently performing a RI/FS at the Lower Ley Creek Subsite. Significantly elevated levels of PCBs and metals have been detected in sediment. Contract documents from the 1970's widening of the Creek indicate that dredge spoils were deposited within the floodplain adjacent to the Creek. Additional sampling will be conducted to determine the extent of contamination within the Ley Creek floodplain. A RI report has been developed by NYSDEC for the Old Ley Creek Channel site.

Niagara-Mohawk Hiawatha Blvd Subsite

- The remedial design of the selected remedy is underway. The remedy calls for contaminated soil in the northeastern portion of the site that could leach contaminants to groundwater to be solidified in place and groundwater along the northern perimeter of the site to be treated using enhanced bioremediation.

Onondaga Nation Consultation

Issue - In November 2009, the Onondaga Nation, sent EPA a draft Notice of Intent to Sue stating that the areas listed under the Onondaga Lake National Priorities List (NPL) Site when the Site was originally scored have since been removed through "non-subsite" determinations.

The four areas specifically discussed in the draft Notice of Intent to Sue are Wastebeds 9-15, LCP Bridge Street Operable Unit (OU) 2, Crouse-Hinds Landfill, and Mathews Avenue Landfill. Counsel for the Onondaga Nation has reviewed recent draft subsite determinations made at the Site and all prior and future EPA determinations to not take Superfund action at the Site will be publicly noticed in resolution to the draft Notice to Sue issues. The Onondaga Nation and other members of the Trustee Council wish to protect any possible Natural Resource Damage (NRD) actions pertaining to Onondaga Lake, its tributaries and upland areas.

Response – In December 2009, ERRD sent a letter to the Onondaga Nation stating that the Nation would be included in future subsite determinations made at the Site and that EPA would explain the basis of “non-subsite” determinations for areas of concern prior to determining not to include them as subsites of the Site. EPA issued a public notice entitled *EPA’s Determination to Not Take Superfund Action at LCP Bridge Street Operable Unit 2 and Wastebeds 9 to 15 Onondaga Lake Areas of Concern* in October 2010. The notice describes the technical basis for not taking a Superfund action at these two areas of concern. Comments on the notice were received from the Onondaga Nation as well as other entities and a decision document with responsiveness summary is under development. A similar public notice entitled *EPA’s Determination to Not Take Superfund Action at the Mathews Avenue and Crouse Hinds Landfill Areas of Concern* was provided in draft to the Onondaga Nation in February 2011. Comments received from the Nation in March 2011 are under review.

Wastebed 13

Issue - In response to some public concerns about potential health risks associated with the planned construction and use of a sediment consolidation area (SCA) on Wastebed 13, in June 2010, EPA completed a human health risk assessment that evaluated risks resulting from potential exposure to nearby residents while the remedy is being implemented and in the unlikely event of a catastrophic failure of the SCA. This assessment also evaluated potential impacts to residents living in existing homes and in areas where future homes are planned to be built. In the scenarios noted above, the risk assessment found no health risk or hazards which exceeded acceptable risk ranges and levels identified in the NCP, and Superfund policy and guidance.

Response - Discussions with the Town to ensure that it has an opportunity to be fully engaged in finalizing the SCA plan have been ongoing. Through the enhanced collaboration and consultation, the Town has had a significant and substantial opportunity to: i) become aware of the details of proposed actions, ii) engage the State in detailed discussions regarding the design and operation, and iii) influence the decisions. In May and June 2011, members of the lead and SCA citizen participation work groups for the Lake Bottom Subsite participated in tours of the SCA as well as Wastebeds 1-8 held by representatives of NYSDEC and Honeywell.

Fact Sheet: **Onondaga Lake Partnership (OLP) Summary**
Lead Division: **DEPP**
Applicability: **Onondaga Nation**

Background

- The OLP is authorized under Section 573 of the Water Resources Development Act of 1999. WRDA Section 573 authorized the Secretary of the Army to plan, design and implement projects consistent with the Onondaga Lake Management Plan of 1993, and the Amended Consent Judgment (ACJ).
- The Secretary is authorized to lead the partnership with "...appropriate Federal agencies (including the Environmental Protection Agency) and the State of New York and political subdivisions of the State."
- Consistent with WRDA 1999, the OLP Executive Committee includes representatives of USACE (Chair); EPA, NYSDEC, NYS Attorney General, Onondaga County, and the City of Syracuse.
- The Secretary is authorized to "approve revisions to the...management plan..." in consultation with the partnership and after providing for public comment.
- \$10,000,000 is authorized to be appropriated. The authorization expires 15 years after enactment (i.e. in 2014).

Status

- The OLP is overseeing a wide range of projects funded primarily by EPA and USACE, with matching funds from Onondaga County, to improve the Lake and Watershed. The projects include ACJ implementation; Agricultural Environmental Management; roadbank & streambank stabilization; mudboil control; trackdown of bacteria sources in Onondaga Creek and Harbor Brook; and numerous studies supporting lake and watershed management. In addition, the OLP is supporting the Onondaga Creek Revitalization Plan (OCRP) project.
- The ON had requested to be named to the OLP Executive Committee (a position EPA supported). However, the legislation did not include such a provision.
- EPA formerly received funding for OLP through STAG earmarks sponsored by Cong. James Walsh (now retired). EPA has not received funding since FY 2005; all remaining EPA funds will be expiring at the end of FY 2012.

Next Steps

In recognition of the extension of ACJ project completion through 2018, Superfund remediation schedules, and other factors, the OLP has initiated discussions on the future of Onondaga Lake watershed management. EPA prepared an outline for a stakeholder based meeting in the fall 2011 timeframe. A meeting is being scheduled to further discuss coordination of OLP's efforts with numerous other groups and initiatives currently underway related to lake management.

Fact Sheet: Onondaga Nation – Oliver Hill LUST Site Cleanup Status
Lead Division: DECA
Applicability: Onondaga Nation

Issue: EPA continues to monitor the historical LUST site, Oliver Hill. Annual Monitoring will occur in August-September 2011. The FY10 & 11 work is being funded with ARRA-Stimulus LUST funds.

One residence rests atop the LUST plume (it was built within the last 5 years). The elderly resident, Mrs. Bucktooth, is a lung cancer survivor and EPA R2's toxicologist believes it would be prudent to install a ventilation system in her home.

Background: Gasoline contamination was discovered in 1994 stemming from the former gas station referred to as the "Oliver Hill" site. EPA prepared a referral to the Department of Justice and subsequently Mr. Hill, a tribal member at the time, was fined \$4,746,500 for failing to clean up a gasoline leak that contaminated residential drinking water. Mr. Hill never paid the judgment. To date, EPA and NYSDEC have expended over \$3 million dollars on the remediation of the Site.

In 2004, the site was placed by EPA and NYSDEC in *monitored natural attenuation*. Current Onondaga representatives contend this was not their wish. However, EPA and NYSDEC deemed it appropriate since the site is in a rural area along a highway with fewer than five residences and the area has a PWS line no longer requiring the use of private wells for drinking. However, no plans were put in place by EPA or NYSDEC to monitor the site and confirm the decrease in the residual contamination.

The results from 2009 and 2010 annual sampling demonstrated significant decreases in overall contamination at the site. Region 2 noted a small MTBE blip and consulted with John T. Wilson of EPA's Ada, Oklahoma Lab, a recognized national expert on MTBE. Mr. Wilson provided low-tech recommendations on addressing the MTBE which will be implemented at the site in June-July 2010.

In August-September 2010, EPA collected water and vapor samples again from the Site. The results noted compounds within the residence that for an individual with Mrs. Bucktooth's health history, suggest installation of a sub-slab ventilation system.

Current Status:

After several months of negotiation with the Nation and Bucktooths, in June 2011, EPA's contractor submitted a proposal for the residence. Due to the type of heating system in the residence, the costs are three times higher than the usual ventilation system. EPA presently does not have enough funding to cover the costs of the system and annual monitoring. We are evaluating our options.

Recommendation

- EPA is consulting with the Nation to determine if that can contribute to the installation of the system in the Bucktooth residence.

Fact Sheet: Onondaga Lake Tributaries and Clean Water Act Section 303(d) list –
Reviewed June 2011
Lead Division: DEPP
Applicability: Onondaga Nation

Issue:

EPA and the New York State Department of Environmental Conservation (NYSDEC) continue to work with EPA's grantee, Onondaga Environmental Institute (OEI), and the Nation, to assess impairment status for a variety of pollutants in Onondaga Lake tributaries (including Harbor Brook, Ley Creek, Onondaga Creek, Geddes Brook, Ninemile Creek, and other minor tributaries to Onondaga Lake). These tributaries were included on NY's final 2010 303(d) list for a variety of pollutants, including nutrients (phosphorus and ammonia), pathogens, turbidity, cyanide, and unknown toxicity. EPA received a synthesis of data from OEI in early 2008, and considered this information in making listing decisions for the 2008 cycle. EPA received a second submittal from OEI for consideration during the 2010 303(d) listing cycle. EPA analyzed the data presented in OEI's submission and worked with NYSDEC to ensure that all impairments will be addressed. The new information provided by OEI resulted in two new listings – Lower Onondaga Creek and tributaries for turbidity and Bloody Brook and tributaries for aquatic toxicity. EPA continues to encourage NYSDEC to work with OEI and to follow up with sampling and additional investigation where necessary.

Background:

In January 2007, the Onondaga Nation, through their legal counsel, Joseph Heath, submitted a Notice of Intent (NOI) to Sue EPA on the basis that EPA failed to review new or revised water quality standards adopted by the NYSDEC. This claim arose due to the 2002 de-listings of three Onondaga Lake tributaries (Onondaga Creek, Ley Creek, Harbor Brook, based upon a watershed-wide TMDL developed for Onondaga Lake) and the proposed 2006 de-listings of two other tributaries (Geddes Brook and Ninemile Creek). No TMDLs were produced for the individual tributaries. During the 2002 303(d) list development cycle, NYSDEC noted that there was never a plan to address each tributary individually and that the Lake TMDL, in combination with actions required by the 1998 Amended Consent Judgment, constituted enough action to justify the de-listings. These de-listings were subsequently accepted by EPA and the 2002 303(d) list of impaired waterbodies was approved. Two other tributaries, Geddes Brook and Ninemile Creek, remained on NYSDEC's 2002 and 2004 303(d) lists as "waters requiring reassessment" but, as noted earlier, were proposed for de-listing in 2006. In 2007, EPA met with the Onondaga Nation and agreed that the tributaries proposed for de-listing should remain listed and the tributaries previously de-listed should be re-listed. As part of this agreement, EPA and the Nation also agreed that subsequent study should be undertaken to help determine impairment status for a variety of pollutants including, but not limited to, nutrients, pathogens, and PCBs. The Nation agreed to work with EPA, NYSDEC, and OEI produce a more robust assessment of water quality. At the Nation's request, an existing EPA grant to OEI, which is supporting environmental monitoring and cultural awareness work on behalf of the Nation, is being used to support the work.

Current Status:

EPA reviewed OEI's 2008 and 2010 data submissions and has worked with NYSDEC to ensure that all water quality impairments are recognized. NYSDEC reached out to OEI during the 2010 303(d) cycle to ensure that listing decisions made by the State were satisfactory to OEI. EPA staff believes that the 2010 303(d) list is an accurate reflection of impairments in the Onondaga Lake watershed.

Message:

EPA and NYSDEC continue to work with the Onondaga Nation and OEI to ensure the most thorough assessment of impairment status possible for the tributaries in question.

Contacts: Seth Ausubel, DEPP-WMB, x3852
Chris Dere, DEPP-WMB, x3828

Fact Sheet: Tully Valley Mudboils Status Report
Lead Division: DEPP
Applicability: Onondaga Nation

Objective: Securing long-term funding for management of the mudboils.

Background

In 1991, the Onondaga Lake Management Conference (OLMC) - precursor to the Onondaga Lake Partnership (OLP) - created the "Mudboil Working Group." This group of local, state and federal agency representatives was tasked with the planning efforts to identify the cause of mudboil activity and to formulate ways to reduce or eliminate damaging sediment associated with mudboil discharges.

During the 1990s, the U.S. Geological Survey and other agencies and organizations identified artesian pressure within the underlying aquifer as the driving force behind mudboil flow. Flow from the mudboils is affected seasonally by changes in artesian pressure associated with groundwater recharge; in spring, the mudboils are more active whereas in summer mudboils are less active as recharge to the aquifer declines.

The results of tributary diversion, depressurizing well installation, and the impoundment dam were very successful. Diverting flow from the mudboil area reduced sediment loading to Onondaga Creek by half – from nearly 30 tons/day to about 15 tons/day. The impoundment dam reduced the average daily load of sediment discharged from the mudboil area to Onondaga Creek from 15 tons/day in 1992 to 1.5 tons/day during 1993-94. From 1995 till 2010, the sediment discharge to the Creek was about 0.5 tons/day – a 97% reduction from the early 1990s.

In early 2010, a large mudboil near Onondaga Creek became active which resulted in the collapse of the berm that had been constructed to prevent the sediment from the mudboil being discharged to the creek. Turbidity has increased in Onondaga Creek and is noticeable down to the Inner Harbor area and at the mouth of Onondaga creek. A series of measures suggested by the USGS and the Onondaga County Soil & Water Conservation District had been considered by the Onondaga Lake Partnership to contain this particular mudboil/subsidence area and reduce the sediment loading to Onondaga Creek to its former low level. None of the proposed measures were viable since the mudboil activity has moved into the creek.

Status of Project

Over four million dollars have been expended since the early 1990s to study, remediate, and maintain the mudboil remedial projects. Periodic maintenance activities include dredging of sediment-filled containment areas and repairing of flow-measuring and flow-diversion structures. Depressurization wells require constant maintenance to assure continued well discharge and diminished mudboil activity.

Federal funding for this project ends September 28, 2012. These remedial projects will need to be closed down and the land restored to its former condition, as required by an access agreement with the landowner (Honeywell Corporation). Shutdown would have to begin in late summer 2011. Without maintenance and operation of ongoing actions, including the most recent mudboil development adjacent to Onondaga Creek, mudboil sediment discharge may return to pre-project levels of 15 to 30 tons/day, into Onondaga Creek, the Inner Harbor and Onondaga Lake.

In anticipation of depletion of available federal funding, new studies were initiated in 2007, to determine if groundwater flow entering the mudboil aquifer upstream of the mudboils (at the southern end of the Tully Valley and potentially along the flanks of the valley walls) can be reduced, which would reduce the artesian pressure driving mudboil activity. If this approach is found to be successful, sediment discharge from the mudboils would be reduced significantly. In this situation, the funds required to maintain current levels of sediment discharge would be reduced but not eliminated. OLP's estimate of the funding needed to continue the remediation program is approximately \$210K per year.

In the fall of 2010, EPA Region 2 had a preliminary discussion with D. Evan Van Hook - Vice President, Health, Safety, Environment & Remediation at Honeywell concerning long-term management of the mudboil remediation program.

EPA Region 2 was seeking support from the Onondaga Nation on the continuation of the remediation efforts as being a NRD credit for Honeywell.

Both the Onondaga Lake NRD Trustee Council and the attorney for the Onondaga Nation expressed unhappiness with the Region's discussion with Honeywell about a possible NRD credit, because the Region had not first discussed the idea with the Onondaga Nation and the NRD Trustee Council (of which the Onondaga Nation is a member, along with the Department of Interior and NYSDEC). The Onondaga Nation viewed the Region's action as a breach of government-to-government etiquette. During an October 26, 2010 conference call between the Region (ERRD and ORC) and the Onondaga Nation, the attorney for the Onondaga Nation began the call with the mudboil issue. Walter Mudgan apologized and stated that the Region would not again contact Honeywell regarding NRD issues without first contacting the Trustee Council.

Current Situation

The OLP developed a plan for closure of the wells associated with the mudboil remediation program. The Onondaga Nation had been involved in the meetings with the members of Partnership to develop the plan. All wells will be closed by late summer 2011 with the possible exception of the depressurizing wells and identified monitoring wells, which will be closed in the summer of 2012.

On November 5, 2010 the New York State Department of Conservation (NYSDEC) and Honeywell entered into an Administrative Consent Order, *In the Matter of Honeywell*, Index No. D-70001-02-03 (November 5, 2010), in which \$250,000 was allocated each year for a period of five years for the OLP mudboil program to be developed annually by the OLP in consultation with NYSDEC. The funding will be used for future study and remediation of the mudboils.

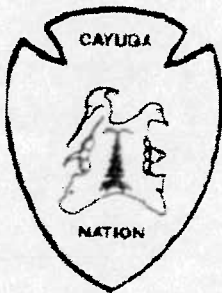
Concerns

Discussions and correspondence with the Onondaga Nation indicate that the Nation would prefer that available funds be used towards the study and long-term remediation goals for the mudboils, rather than keeping mudboil remediation wells open.

In regards to seeking mudboil funding through NRD credit, Counsel for the Onondaga Nation, as an NRD Trustee, is not willing to entertain waiving any possible nuisance claim it may have in the future.

CAYUGA NATION FACT SHEETS

- 1 – Grant Dispute Involving the Cayuga Nation (ORC / HQ-OGC)
- 2 – Cayuga County Groundwater Contamination Site (ERRD)
- 3 – Seneca Meadows Landfill (DEPP)
- 4 – Cayuga Lake: Lake Source Cooling Plant SPDES Permit Issues (DEPP)
- 5 – Cayuga UST Matters (DECA)



CAYUGA NATION
—
PEOPLE OF THE GREAT SWAMP



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Fact Sheet: Grant Dispute Decisions Involving the Cayuga Nation
Lead Division: ORC / HQ-OGC
Applicability: Cayuga Nation

The Cayuga Nation is in the midst of an ongoing intra-tribal dispute regarding the leadership of the Cayuga Nation. Since August 2007, one of the two opposing Cayuga Nation factions (Halftown faction) has filed various administrative appeals to EPA under the grant dispute provisions of 40 CFR § 31.70 regarding EPA's August 6, 2007, decision to deny a direct EPA General Assistance Program (GAP) grant to the Nation in the amount of \$526,312. All of the Halftown faction's appeals to EPA requesting reversal of the decision have been denied.

Background Information

The Haudenosaunee Environmental Task Force ("HETF") is an intertribal consortium that receives GAP grant funding on behalf of the consortium Tribal members, one of which is the Cayuga Nation. The Halftown faction, led by the Bureau of Indian Affairs ("BIA")-recognized spokesman of the Nation, Clint Halftown, contends that the Nation has terminated its membership with the HETF and that no EPA funding earmarked for the Nation should be awarded to the HETF. The opposing faction asserts that Mr. Halftown lacks the authority to make such decisions for the Nation. Region 2 has maintained that EPA will continue to award GAP funding to the HETF for the benefit of the Nation because a consensus decision by the Nation Council (which we understand is the Cayuga tradition) has not been reached to supersede the 2001 consensus decision of the Nation Council which instructed EPA to award GAP funding to the HETF for the benefit of the Nation. Based on this position, on August 6, 2007, Region 2 denied Mr. Halftown's application for a direct GAP grant to the Nation and this decision was appealed by the Halftown faction to the Region 2 Disputes Decision Official ("DDO") on August 30, 2007. On June 12, 2008, the DDO upheld EPA's August 6, 2007, decision. On July 11, 2008, the Halftown faction appealed the DDO's decision to the Region 2 RA. On June 12, 2009, the Acting RA upheld the DDO's determination in its entirety. On July 10, 2009, the Halftown faction appealed the RA's decision to the AA for Water. On December 17, 2009, the AA for Water denied the Halftown faction's request for review and upheld the RA's decision in its entirety.

Significant Current Issue

The issue of GAP funding to the Nation may be raised during the Conference. Although denied, the Halftown faction's appeals to EPA have alleged that the Agency's decision to deny a direct GAP grant to the Nation is, among other things: erroneous, arbitrary, capricious, *ultra vires*, an improper intrusion into the affairs of a sovereign nation; in violation of 40 CFR § 31.44(b), which allows a grantee or subgrantee to terminate an assistance agreement by written notification to EPA; in violation of Executive Order 13175 which requires federal agencies to respect Indian tribal self-government and sovereignty; based on misrepresentations by the current GAP grant recipients; and based on EPA's misinterpretation of the BIA's recognition of the scope of Mr. Halftown's status as the Nation's federally-recognized representative.

Agency Position

Pursuant to 40 CFR § 31.70, the AA has the discretion to either review the RA's decision or deny review of the RA's decision. In denying the Halftown faction's request for review of the RA's decision on December 17, 2009, the AA for Water concluded that discretionary review was not warranted based on the issues raised and the facts presented and that the RA decision remains the final Agency action. Accordingly, the Agency's position remains that EPA will continue to award GAP funding to the HETF for the benefit of the Nation because a consensus decision by the Nation Council (which we understand is the Cayuga tradition) has not been reached to supersede the 2001 consensus decision of the Nation Council which instructed EPA to award GAP funding to the HETF for the benefit of the Nation.

Fact Sheet: Cayuga County Groundwater Contamination Site
Lead Division: ERRD
Applicability: Cayuga Nation

Background

The Cayuga County Groundwater Contamination site (Site) consists of a plume of contaminated groundwater from an unknown source(s). The suspected extent of the plume covers an area of approximately 3,050 acres or 4.8 square miles and falls within three townships, Aurelius, Fleming and Springport. The plume extends from the Village of Union Springs to the Auburn City limits, a distance of seven miles, and has approximately 120 homes within its boundaries. The Site is in an area consisting of residential properties intermingled with extensive farmland and patches of woodlands. The homes in the area use private wells for potable water supply and septic systems for sanitary waste water disposal. There is a limited public water supply and some affected homes are connected to it.

This site is being addressed in two stages: emergency response actions including providing treatment systems and an alternate water supply for the affected residents, and a long-term remedial phase which will focus on identifying and controlling the source(s) of contamination and remediating the contaminated groundwater.

- Following the discovery of the contaminated wells, EPA initiated an emergency response action at the Site and installed 54 treatment systems to treat contaminated water.
- Since 2002, 50 treatment systems were removed after each of the residences were connected into public water supply. Four treatment systems remain in operation.
- EPA is currently undertaking a Remedial Investigation/Feasibility Study (RI/FS). The RI involves gathering groundwater, surface water and hydrogeological data needed to determine the nature and extent of contamination and to identify potential source(s). The FS involves evaluating appropriate alternatives to address the contamination.
- Work completed to date include, a Stage I Cultural Resources Survey, the installation of multi-port monitoring wells and the sampling and analysis of those wells; surface water and sediments were also sampled and analyzed; data were validated and tabulated; and additional locations to be sampled were identified. The Ecological and Human Health Risk Assessment reports were also completed.
- EPA and members of the Cayuga Nation participated in a walk-over of the site prior to the completion of the well installation.

Discussion:

The Ecological and Human Health Risk Assessment reports were submitted to the Cayuga Nation. The RI Report is scheduled to be completed by September 2011.

Recommend:

The Final RI report will be provided sent to Cayuga Nation.

Fact Sheet: Seneca Meadows Landfill
Lead Division: DEPP
Applicability: Cayuga Nation

Regulatory background:

In 1991, EPA promulgated national criteria for owners and operators of municipal solid waste landfills in the Title 40, Part 258 of the Code of Federal Regulations (CFR). These criteria became effective for owners and operators on October 9, 1993. In publishing these criteria, EPA intended to ensure that on a national basis, landfills would be operating at a uniform technical level with states and Indian nations (where applicable) maintaining the lead role in implementing and enforcing the criteria through approved permit programs.

EPA reviewed the entire New York State landfill permit program and made a determination of adequacy of its program in 1995. That meant that the State had demonstrated that its landfill permitting regulations were equivalent to 40 CFR Part 258 criteria for siting, designing, operating, closing, and financing MSW landfills. In addition, the State had demonstrated that it had adequate authorities and resources to enforce its program. The Part 258 landfill criteria can be viewed at <http://www.epa.gov/epaoswer/non-hw/muncpl/landfill/index.htm>. Select the Municipal Solid Waste Landfill Criteria - Technical Manual. The New York State regulations (6 NYCRR Part 360) can be viewed at the state web site: <http://www.dec.state.ny.us/website/regs/index.htm>. Select the Part 360 regulations.

As an approved state, New York continues to maintain its permitting authority as well as enforcement responsibilities for the Seneca Meadows Landfill. The landfill must meet the requirements of state regulations as referenced above.

Status of the landfill (November 2008)

The landfill is owned and operated by Seneca Meadows, Inc. (SMI), which is owned by IESI, a spin-off of WMI. It currently is the largest operating landfill in New York State in terms of its daily intake (6000 tons/day municipal solid waste) and square footage. The landfill measures approximately 230 ft. above the level of the terrain and is permitted to accept only municipal solid waste with some items classified as non hazardous material from the industrial sector (e.g. office waste). Oversight of the daily operations of the landfill is handled by the Region 8 office of the New York State Department of Environmental Conservation. An on-site environmental monitor is stationed at the landfill four days per week. That contact is Ken Leitner; phone number (585) 226-5417. The overall NYSDEC contact is John Swanson, Project Engineer; phone number (585) 226-5419.

State permits

The NYSDEC initially granted SMI a permit to operate a landfill on March 13, 1999, and renewed the permit for an additional 10 years on October 11, 2007. The permit process had been initiated several years prior to the expiration date and included a public comment process, one of the requirements for EPA program approval.

SMI applied for a permit modification for the expansion of the existing landfill footprint. NYDEC issued a permit modification for a 181 acre expansion on August 7, 2007. This modification was renewed after its expiration on October 10, 2007.

On November 26, 2008, the solid waste landfill operation permit was modified to make the plans more consistent with those in the wetland permits. The permit, including all modifications, expires on October 10, 2017.

On April 27, 2009, SMI applied for a permit to construct and operate a 153-acre surface mine at a nearby property to extract clay materials for use as daily landfill cover. The project will be completed in four stages over a 12-year period, and will conclude with a reclamation project of the construction of a lake on the site. The NYSDEC issued a positive declaration on the final scope of the project on July 29, 2009, which allowed SMI to initiate the required Environmental Impact Statement.

SMI filed the draft Environmental Impact Statement (dEIS) on April 26, 2010. The proposal was modified to reduce the footprint of the clay mine to 120.2 acres. Staff completed their review of the first draft of the dEIS and returned it to the applicant on June 8, 2010. Deficiencies in the dEIS that must be supplemented with additional information included noise modeling, the storm water pollution prevention plan, hydrogeology, and the mined land use plan.

The contact for the landfill operation permit administration is Kimberly Merchant, who can be reached at (585) 226-5392. The contact for the mine permit application is David Bimber, who can be reached at (585) 226-5401.

Federal permits

Since some of the proposed expansion involved federally identified wetlands, a permit from the US Army Corps of Engineers (USACE) was required. The USACE permit was issued August 24, 2007.

The USACE contact is Margaret Crawford of the Auburn, NY, office. She can be reached at (315) 255-8090.

SMI

Donald Gentilcour is the site manager for the Seneca Meadows Landfill and maintains an administrative record of all decisions. Any questions regarding SMI operations or schedules can be directed to Mr. Gentilcour at (315) 539-5624.

Attempts to update the current status of operations at SMI remain unresolved. EPA will continue to pursue this information after the meeting.

Fact Sheet: Cayuga Lake: Lake Source Cooling Plant SPDES Permit Issues
Lead Division: DEPP
Applicability: Cayuga Nation

Issue:

In January 1998, NYSDEC issued a State Pollutant Discharge Elimination System (SPDES) permit for the discharge of cooling water from Cornell's Lake Source Cooling Facility. The facility withdraws cold water from the bottom of Cayuga Lake for the purpose of cooling Cornell University's utilities system. Community opposition to this project was based on the concern that it would introduce additional loading of phosphorous to Cayuga Lake.

Background:

NYSDEC issued a SPDES permit in January 1998 for the discharge of cooling water from Cornell's Lake Source Cooling Facility. Following issuance of the permit, EPA Region 2 responded to public concerns about the potential adverse impacts of the discharge. EPA conducted a special review of the project, focusing on the discharge of phosphorous to Cayuga Lake, which is listed on the state's 303(d) list as impaired due to nutrients and sediments. The facility started operation on July 17, 2000.

EPA reviewed the draft Before After Control Impact (BACI) Study- a statistical analysis of ambient data prepared by Cornell that was required by the permit. This draft analysis stated that the discharge has not lead to a significant increase in phosphorous, turbidity, or chlorophyll-a in Cayuga Lake, based on comparisons of analytical results from paired locations within the lake. In response to comments from NYSDEC, Cornell submitted an updated analysis to NYSDEC on November 3, 2008, using different statistical methods that are more clear and comprehensive. NYSDEC provided additional comments in April 2009, requiring that Cornell include additional pairings of locations in their analysis, which some groups believe demonstrate a long-term impact to the lake since the facility began discharging. Correspondence between NYSDEC and Cornell was emailed to the Cayuga Nation in July 2009.

Current Status

The current SPDES permit expired in March 2008. NYSDEC and Cornell have been engaged in negotiations regarding draft permit conditions to address phosphorous in the next renewal. NYSDEC is currently engaged in internal discussions regarding this permit. When the draft permit is available for public comment, EPA will provide the Cayuga Nation with a copy and ensure that they are aware of the dates for comment. Additionally, NYSDEC has offered to meet with the Cayuga Nation once a draft permit has been issued to explain the permit conditions and decisions regarding phosphorous.

NYSDEC has not yet begun development of a TMDL for phosphorous for Cayuga Lake. The lake is occasionally slightly above the guidance value for phosphorous. Coordination and funding for collection and analysis of quality data that is representative of the nonpoint source contribution have delayed development of this TMDL. Advanced phosphorous removal

treatment at the Ithaca Sewage Treatment Plant completed in Summer 2008 have reduced the phosphorous loading from the Ithaca plant by approximately 50%, and improvements at the Cayuga Heights plant completed in January 2010 have achieved significant reductions in phosphorous loading.

July 12, 2011

Contact: Karen O'Brien, DEPP/CWRB/NPDESS (212) 637-3754

Fact Sheet: Cayuga UST Matters
Lead Division: DECA
Applicability: Cayuga Nation

Issue: Minor non-compliance concerns at the Tribally-owned USTs that we would like to address through additional compliance assistance.

Background: The Cayuga Nation of New York (CAY-NY) owns Lakeside Trading Post #1 in Seneca Falls, NY and Lakeside Trading Post #2 in Union Springs, NY. Both high volume facilities are within 1/8 mile of Cayuga Lake. EPA conducted UST inspections in 2004, 2008 and on June 16, 2011.

The two CAY-NY facilities are on fee land which is being petitioned for the Department of Interior to place into "trust land" status. The facilities are surrounded by non-Indian communities, where some hostility remains to Cayuga's land claim cases.

The 2004 and 2008 inspections found significant non-compliance. EPA worked with the facilities for several months after both inspections to ensure they returned to compliance. After the 2008 inspection, Region 2 was poised to seek OECA authorization to issue an enforcement action. On the very last day, the Nation submitted the documents and enforcement was not pursued.

The Cayuga Nation of Oklahoma (CAY-OK) recently acquired one UST facility in Seneca Falls, NY. EPA inspected it on June 16, 2011. The site was previously owned by a non-tribal person and inspected by NYSDEC.

Current Status: EPA conducted inspections of both CAY-NY facilities on June 16, 2011. The operations of the facilities were vastly improved. While there were minor compliance issues, i.e. record keeping and switching to ethanol from gasoline without checking for equipment compatibility with the UST (EPA did confirm compatibility of the UST but other pieces of equipment require further evaluation) the UST inspector recommends working with the facilities on compliance assistance.

The CAY-OK facility was recently upgraded with new equipment but paperwork was not on-site for the inspector. EPA is following up. [Note—the CAY-NY, somewhat in jest, requested EPA shut down the facility.]

Recommendation:

- EPA and Cayuga work together to ensure Cayuga facilities are following federal regulatory requirements (rather than New York State requirements).

SHINNECOCK INDIAN NATION FACT SHEETS

1 – Shinnecock Indian Nation (DEPP)



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Fact Sheet: Shinnecock Indian Nation
Lead Division: DEPP
Applicability: Shinnecock Indian Nation

Federal Recognition and Government-to-Government Relations

On Tuesday June 14, 2010 the Shinnecock Indian Nation received the US Final Determination concerning their Federal Recognition request. The Shinnecock Indian Nation, located near Southampton, NY on Long Island, received federal recognition after first seeking federal recognition back in 1978 (32 years). This federal recognition is important because it means that the R2 EPA now has a government to government relationship with Shinnecock and the Nation can come in for Federal financial assistance. New York State officially recognized the Shinnecock in 1792 and they have had a state-recognized reservation near the town of Southampton, NY.

Government

The nation numbers over 1400 people, more than half of whom reside on the reservation adjacent to the Town of Southampton on the East End of Long Island. While their ancestral lands have dwindled over the centuries from a territory stretching at least from what is known today as the Town of Easthampton and westward to the eastern border of the Town of Brookhaven, they still hold on to approximately 1200 acres of ancestral lands.

Traditionally, decisions concerning the welfare of the tribe were made by consensus of adult male members. Seeking to shortcut the consensus process in order to more easily facilitate the acquisition of Indian lands, the Town of Southampton devised a three member trustee system for the Shinnecock people. This system of tribal government was approved by the New York State legislature in February of 1792. Since April 3, 1792, Shinnecock Indians have gone to the Southampton Town Hall the first Tuesday after the first Monday in April to elect three tribal members to serve a one- year term as Trustees.

In April of 2007, the Shinnecock Indian Nation exercised its sovereign right as an ancient Indian Nation and returned to one of its basic Traditions: it bypassed the Southampton Town Hall and for the first time since 1792 held its leadership elections at home, where they will remain.

The Trustee system, however, did not then and does not now circumvent the consensus process, which still remains the governing process of the Shinnecock Indian Nation. Major decisions concerning the tribe are voted yea or nay by all eligible adult members, including women, who gained the right to vote in the mid-1990s. Also in that period, the Shinnecock Nation installed a Tribal Council, a 13 member body elected for two years terms. The Council is an advisory body to the Board of Trustees.

2011-12 Shinnecock Indian Nation Board of Trustees

Randy King, Chairman
Frederick C. Bess
Gerrod T. Smith

Board of Trustees: The Trustee system of tribal government was approved by the New York State legislature in February of 1792. Since April 3, 1792, Shinnecock Indians have gone to the Southampton Town Hall the first Tuesday after the first Monday in April to elect three tribal members to serve a one- year term as Trustees. In April of 2007, the Shinnecock Indian Nation exercised its sovereign right as an ancient Indian Nation and returned to one of its basic Traditions: it bypassed the Southampton Town Hall and for the first time since 1792 held its leadership elections at home, where they will remain.

Tribal Council: The Shinnecock Nation Tribal Council was established in 1993 and is made up of 13 members who are elected by the Tribe for two-year staggered terms. The Council is an advisory board for assisting the Board of Trustees. For six months before the actual formation, Tribal members gathered every Saturday morning at Tribal Council Formation Meetings held in the Church's Parrish Hall, to discuss the pros and cons of establishing a Council. The decision was yes, and the Council was formed by the community so that the membership could be kept more informed of tribal business.

2011 Tribal Council

Dyáni Brown, Chairperson
Jason King, Vice Chairperson
Susan Soto, Corresponding Secretary
Dianne Vieira, Recording Secretary
Roberta Hunter-Cuyjet, Treasurer
Donna Bess
Angela Coard
Eugene Cuffee II
James Keith Phillips
Charles K. Smith II
Josephine Smith
Rachel Valdez
Richard Weeks

Council of Elders: The Shinnecock Indian Nation Council of Elders was formed in the summer of 2009 and officially voted on at a duly convened Tribe Meeting under Resolution C.E. 12.04.09. Co-chairs of the Council of Elders consist of two of the oldest living Shinnecock Tribal Members on the Rolls. The mission of the Council of Elders is to serve as traditional wisdom keepers of the Nation and to provide guidance, advisement and support to the leadership of the Shinnecock Indian Nation, consisting of both Board of Trustees and Tribal Council **James W. Eleazer Jr (Co-Chair) Ed Garrett (Co-Chair)**

The Shinnecock Shellfish Hatcheries and Environmental Center: The Shinnecock Nation had great expectations for the original tribal Oyster Project which opened in 1973, but brown tide and general pollution forced it to close before it developed into the business enterprise it was planned to be. The hatchery was operational for less than 10 years, but the reseedling of oysters in our bay waters began again in 2004 and the project has been revived under the new name of The Shinnecock Shellfish Hatcheries and Environmental Center.

Shinnecock Indian Nation: An Ancient History and Culture

(in **their** own words from their website: <http://www.shinnecocknation.com/history.asp>)

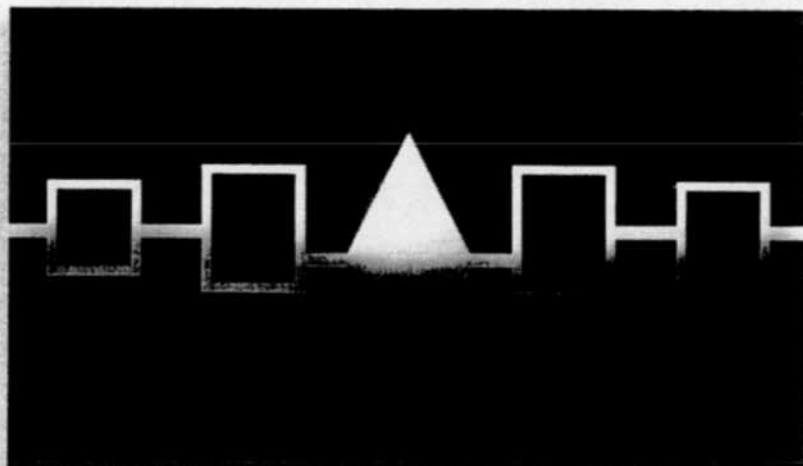
Since the beginning, Shinnecock time has been measured in moons and seasons, and the daily lives of our people revolved around the land and the waters surrounding it. Our earliest history was oral, passed down by word of mouth from generation to generation, and as far back as our collective memory can reach, we are an Algonquin people who have forever lived along the shores of Eastern Long Island. As coastal dwellers, we continue to prize the bounty of the sea, the shellfish, the scaly fish, which for thousands of years provided the bulk of our diet. We were whalers, challenging the mighty Atlantic from our dugout canoes long before the arrival of the big ships, long before the whaling industry flourished in the 19th century. In the 1700's, we became noted among the northeastern coastal tribes for our fine beads made from the Northern quahog clam and whelk shells. The Dutch, who arrived on our shores before the English, turned our beads (wampum) into the money system for the colonies.



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GENERAL ISSUES - ALL INDIAN NATIONS

- 1 – Marcellus Shale/Hydraulic Fracturing (DECA)
- 2 – Air Program Opportunities (DEPP)
- 3 – Tribal Solid Waste Management Program: General Information, Status of Region 2 Tribal Integrated Tribal Solid Waste Management Plans (ITSWMP) and Open Dumps (DEPP)
- 4 – Consultation and Coordination with Tribal Governments (DEPP)
- 5 – General Assistance Program (GAP) Funding Matters (DEPP)



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Fact Sheet: Marcellus Shale/Hydraulic Fracturing
Lead Division: DECA
Applicability: All Indian Nations

Confidential -- For Internal Use Only

Location: NY

Contact: Kathleen Malone-Bogusky

Issue:

Concerns have been raised about the high volume hydraulic fracturing (HF) process that is used to enhance the gas-recovery of shale gas deposits which has attracted new interest in the extraction of natural gas from the Marcellus Shale, a rock formation that underlies south/central New York State (as well as Pennsylvania and other adjoining states.). Opposition to drilling in NY is strongest in the Delaware and Hudson River watersheds, which provide NY City with its unfiltered drinking water. Public sentiment in NY's southern tier is mixed as many hope for the economic boom that natural gas extraction may provide for this economically depressed region which lies across the border from PA's most productive Marcellus areas.

The New York State Department of Environmental Conservation (NYSDEC) issued a draft Supplemental Generic EIS (dSGEIS) in September 2009 to evaluate potential impacts and establish mitigation measures for high volume HF (comment period closed in December 2009). Also, the Delaware River Basin Commission (DRBC) proposed additional natural gas requirements for drilling in the Delaware River Basin (DRB) in December 2010 (comment period closed on April 15, 2011).

Status:

New York is unique from other states in that it decided not to issue any permits to allow companies to engage in high volume HF until the state has finalized its dSGEIS. EPA Region 2 reviewed NYS dSGEIS and submitted 17 pages of comments to NYSDEC on December 30, 2009. NYSDEC has received over 14,000 comments; and are expected to issue a revised dSGEIS in July of 2011 for additional public comment. NYSDEC did announce, in April 2010, that this Supplemental Generic EIS (SGEIS) even when finalized would not apply to horizontal drilling activities with high volume HF in the New York City watershed or the Skaneateles Lake watershed (both unfiltered systems). Applications to conduct such activities in these watersheds will require a case-by-case environmental review in order to better ensure the continued safe use of the unfiltered water supplies in these areas. Thus, high volume HF in these watersheds is much less likely vs., the rest of the State which will be covered by the SGEIS once issued as Final.

Many opponents of high volume HF feel strongly that there should be a moratorium on the practice in New York until EPA's Office of Research and Development (ORD) completes its study on the possible relationship between HF and drinking water resources. A draft study plan is now with EPA's Science Advisory Board. The Agency will revise the study plan in response to the SAB's comments. Initial research results are expected by the end of 2012 with a goal for a report in 2014.

To solicit input on the scope of the study, EPA did hold a series of public meetings in major oil and gas production regions to hear from citizens, independent experts and industry, including 4 meetings held in Binghamton, NY on September 13 and 15, 2010, where about 800 people were in attendance and more than 200 speakers were given an opportunity to present their comments. Both pro and anti drilling comments were presented, which ran about 60% anti and 40% pro drilling.

Also, on September 9, 2010, as part of EPA's efforts to understand any potential relationships between HF and drinking water, EPA issued voluntary information requests to nine leading national and regional HF service providers to seek information on the chemical composition of fluids used in the HF process, data on the impacts of the chemicals on human health and the environment, standard operating procedures at HF sites, and the locations of sites where fracturing has been conducted. Given that the data being sought by the agency is similar to information the industry already provided separately to Congress, EPA expected the companies to cooperate with these voluntary requests and in fact, on November 9, 2010, EPA announced that eight of the nine HF companies did agree to submit timely and complete information to help the Agency conduct its study on hydraulic fracturing. However, the ninth company, Halliburton, did not agree, and as a result, EPA issued a subpoena to the Halliburton requiring submission of the requested information that was not provided voluntarily. On December 3, 2010, EPA received written confirmation from Halliburton that it will comply with the agency's mandatory request for information on the company's hydraulic fracturing operations.

In addition to the study on HF and drinking water, EPA Regions 2, 3, 6, and 8 jointly sent a letter to Bob Perciasepe, Deputy Administrator of EPA, on October 29, 2010 requesting that the Final 2010 Effluent Guidelines Program Plan include EPA's commitment to develop pretreatment Effluent Limit Guidelines (ELG) for coal bed methane (CBM) and shale gas extraction (SGE). The 2010 ELG Plan is now in OMB. SGE wastewater from the Marcellus Shale typically contains high levels of total dissolved solids, particularly chloride, as well as high levels of radionuclides. Also, metals and HF additives may also be a concern. As highlighted in a NY Times series on drilling during the week of February 28th, Publicly-Owned Treatment Works are not typically designed to treat for these pollutants, which may simply pass through and enter the environment. Also, some of the pollutants of concern may in fact interfere with the operations of the treatment plants and if the treatment plant uses chlorination as the treatment process, the elevated levels of bromide in flowback water will produce more brominated disinfection byproducts which have significant health concerns associated with them. EPA's Office of Water issued a NPDES program frequently asked questions document on natural gas drilling in the Marcellus Shale on March 17, 2011. EPA Region 2 sent this document to the 118 POTWs in New York State that have either an EPA approved pretreatment program or a New York approved mini pretreatment program as well as to the St. Regis Mohawk Tribe & Salamanca Board of Public Utilities for permits that EPA has issued directly. Other guidance documents for POTWs on managing natural gas non-domestic wastewater are planned.

EPA Region 2 and Region 3 issued joint comments on DRBC's proposed natural gas regulations on April 15th. The purpose of these regulations is to protect the water resources of the Delaware River Basin during the construction and operation of natural gas development projects. Six public meetings on the rules were held, two of which were in Liberty, NY and two in Trenton, NJ. Similar to the public hearings on the EPA study in Binghamton, NY, both pro and anti-gas

comments were heard; with the majority (65%) being against gas drilling in the DRB or at least with serious reservations. The DRBC does not expect to issue their final natural gas regulations until the fall of 2011. Thus, the first natural gas dockets will more than likely not be approved until early 2012.

It should be noted that the New York State Attorney General (NYSAG) is currently suing the Federal government over not developing an environmental impact statement under the National Environmental Policy Act (NEPA) prior to the issuance of the draft natural gas regulations by the DRBC. The NYSAG alleges that NEPA applies in this case given the fact that the Federal government has a representative on the DRBC with voting rights.

EPA is also undertaking a three-year (FY 2011-2013) Energy Extraction National Enforcement Initiative. The goal of the initiative is to use all our available tools (e.g. environmental assistance, compliance incentives, compliance monitoring, and enforcement) to ensure that energy extraction and production activities are in compliance with applicable environmental regulations as well as to reduce their overall environmental footprint to protect public health and the environment.

Finally, EPA is in the process of developing Underground Injection Control (UIC) permitting guidance for hydraulic fracturing activities that use diesel fuels in fracturing fluids. As part of the process, EPA held six webinars with the following stakeholder groups: state and tribal primacy agencies (May 9, 2011); federal partners (May 10, 2011); industry representatives (May 11, 2011); environmental organizations (May 16, 2011); tribal representatives (June 2, 2011); and the general public (June 11, 2011).

Interest:

The Marcellus Shale gas drilling issue has received attention from elected officials, due to the keen public interest and potential financial implications of gas drilling. Congressman Hinchey has proposed legislation that would eliminate the Safe Drinking Water Act and Clean Water Act exemptions that exist for hydraulic fracturing activities and drilling infrastructure construction. Echoing and amplifying concerns raised by many New York City Council members, the New York City Department of Environmental Protection (NYCDEP) has called for a moratorium on drilling in the New York City watershed. NY City's main concerns were addressed by their December 2009 final environmental impact assessment report (by Hazen and Sawyer) which was submitted to NYSDEC. The main concerns covered by the NY City's Report are:

- Large volumes of water required for HF (3 to 8 million gallons per well): if taken from the NYC watershed, could jeopardize reservoirs, especially in times of drought.
- HF process: may lead to migration of frac fluid additives and methane from shale to the surface via cracks and faults above the shale layer or via faulty cement jobs around the casing.
- Storage of flowback liquid containing frac fluid additives and natural contaminants such as radionuclides like uranium: possible spills and leaks.
- Lack of wastewater treatment plants with either the technology or capacity to treat the flowback liquid before its discharge into water bodies.

--Cumulative impacts of many wells: increase the likelihood of the problems above; transform pristine, rural watershed areas to noisy, heavily trafficked areas.

--Infrastructure Damage: High-volume HF could damage the City's water supply infrastructure; of greatest concern are our tunnels which are located both inside and outside the New York City watershed. Naturally occurring fracture systems have been demonstrated to transmit fluid and pressure, as evidenced by saline water and methane seeps encountered at grade and in shallow formations near the City's infrastructure during and since its construction.

On August 24, 2010, the New York City Council held a public meeting on HF (in partial response to the lack of an EPA meeting in New York City). EPA Region 2 representatives attended (but did not speak or present). Over 200 people attended and about 80 spoke and presented their comments. The vast majority of attendees expressed opposition to hydraulic fracturing. The Agency fully appreciates the specific need to protect the New York City watershed, and it has already commented to the State of New York asking that special consideration be given to this area, as drilling there has the potential to impact the drinking water consumed by 9 million people.

Options:

EPA Region 2 is awaiting NYSDEC's Final EIS concerning gas extraction in the State. Beyond this Region 2 is participating in the ORD hydraulic fracturing study and related Headquarters efforts, with the aim towards educating the public on these issues and, more importantly, obtaining input from the general public. We are also, along with Regions 3, 6, and 8, standing ready to work closely with EPA's Office of Science and Technology regarding ELG development for CBM and SGE wastewater discharges and to discuss the resources Regions can provide to support such an effort. Moreover, EPA Region 2 is participating in EPA's Energy Extraction Enforcement Initiative as well as the DRBC Federal Interagency Team (FIAT) which has monthly conference to coordinate issues of interest to the Federal community within the DRB, including natural gas development. Finally, we are working closely with EPA HQs on the development of the UIC diesel guidance.

Background:

Primary regulatory authority for Marcellus Shale gas drilling resides with the NYSDEC, through its Division of Mineral Resources' drilling permit program. Other important regulatory programs include the Safe Drinking Water Act Underground Injection Control (UIC) program, the Clean Water Act National Pollutant Discharge Elimination System (NPDES) program, and river basin commission programs. EPA Regions 2 and 3 are coordinating with state environmental agencies and river basin commissions to share information on gas drilling and to clarify applicable environmental requirements related to surface and ground water protection. EPA Region 2 has direct regulatory responsibility for UIC permit issuance in New York and for Industrial Pretreatment matters within the NPDES program.

Fact Sheet: **Air Program Opportunities**
Lead Division: **DEPP-APB**
Applicability: **All Indian Nations**

Air quality program funding tools

One of the main funding tools that EPA uses in building air programs is Clean Air Act (CAA) grants to help build tribal knowledge and increase tribal capacity to manage air quality issues. Grants given under CAA §103 and §105 authority are the main funding mechanisms.

CAA 103: CAA § 103(b)(3) authorizes EPA to “make grants to air pollution control agencies, to other public or nonprofit private agencies, institutions, and organizations, and to individuals, for [these] purposes.” This broad authority has been used by many tribes to begin work on tribal air programs. Tribes have used the CAA §103 authority to begin air quality assessments, develop emissions inventories, and set up air quality monitoring networks to collect data on ambient air quality. A number of tribes have hired and trained air quality specialists to oversee the implementation of these activities. CAA §103 grants are project grants, and it is EPA’s policy that these grants will not be approved for a performance period greater than five years.

CAA 105: CAA §105(a)(1)(A) authority provides for “implementing programs for the prevention and control of air pollution or implementation of national primary and secondary ambient air quality standards.” The CAA further defines implementation as “any activity related to the planning, developing, establishing, carrying-out, improving, or maintaining of such programs.” This authority establishes continual funding for eligible programs at a reduced match should they meet the following criteria: (1) The applicant is an Indian tribe recognized by the Secretary of the Interior; (2) The Indian Tribe has a governing body carrying out substantial governmental duties and functions; (3) The functions to be exercised by the Indian Tribe pertain to the management and protection of air resources within the exterior boundaries of the reservation or other areas within the tribe’s jurisdiction; and (4) The Indian Tribe is reasonably expected to be capable, in the EPA Regional Administrator’s judgment, of carrying out the functions to be exercised in a manner consistent with the terms and purposes of the Clean Air Act and all applicable regulations.

In order to build the capacity to develop an air program, a national training center (Institute for Tribal Environmental Professionals [ITEP]) has been established. ITEP provides basic to advanced training courses. EPA recommends using the resources available through ITEP, as they have assisted many tribes. (<http://www4.nau.edu/itep/>)

Air quality program activities without using funding tools

Numerous opportunities exist for improving air quality and public health that do not involve funding. There are programs for the reduction of emissions of many air pollutants. Below is a list of some examples of the opportunities in which EPA can assist Indian Nations with outreach materials or guidance. Indian Nations should contact EPA for air quality issues that specifically impact them.

- AIRNow- a website that displays air quality information along with forecasts of future air quality. This information can be used to inform the public to protect themselves or limit activities that could exacerbate air quality issues during unhealthy air quality days. This information could be posted on websites, electronic bulletin boards, and emails.
<http://www.airnow.gov>
- Burn Wise- an EPA partnership program that promotes the proper use of wood burning appliances, how to store firewood, and how to choose clean burning appliances.
<http://www.epa.gov/burnwise>
- Idle Reduction- a program that emphasizes reductions in vehicle idling, which reduces fuel use and emissions. This program can be geared towards school buses, large on- and non-road vehicles, and passenger vehicles.
<http://www.epa.gov/smartway/transport/what-smartway/idling-reduction.htm>

Fact Sheet: Tribal Solid Waste Management Program: General Information,
Status of Region 2 Tribal Integrated Tribal Solid Waste Management
Plans (ITSWMP) –and- Open Dumps
Lead Division: DEPP
Applicability: All Indian Nations

The two major concentrations of the Tribal Solid Waste Management Program involve encouraging Indian Nations to develop an Integrated Solid Waste Management Plan (ISWMP) and to inventory and close open dumps.

The elements of a comprehensive ISWMP are as follows:

1. COMMUNITY SERVICE AREA

- a. Number and Location of Households and Housing Clusters
- b. Population Projections and Waste Generation Rates
- c. Local Economy and Needs of Industrial Waste Generators
- d. Climate as related to collection, storage and disposal
- e. Geographic features; special needs imposed by geography
- f. Geological and engineering properties, as related to closure of open dumps.

2. WASTE MANAGEMENT PROGRAM STRUCTURE AND ADMINISTRATION

- a. Administration and Management of waste and recycling program
- b. Codes, ordinances and related enforcement policy

3. CURRENT AND PROPOSED WASTE MANAGEMENT PRACTICES

- a. Current waste sources
- b. Types and amounts of waste generated
- c. Estimated waste generation growth rates
- d. Collection, transfer and disposal of:
 - (1) household hazardous wastes
 - (2) special wastes
 - (3) hazardous wastes, if any
- e. Waste reduction, separation and recycling practices
- f. Facilities, regional infrastructure, and current partnerships
- g. List of open dumps

4. FUNDING, SUSTAINABILITY AND LONG-TERM GOALS

- a. Continuous service to the community: how will it be paid for?
- b. Long-term goals

5. DOCUMENTATION OF APPROVAL OF THE IWMP BY GOVERNING BODY

For example, a resolution by Nation or Tribal Council expressing official adoption of the IWM Plan

Status of Region 2 Indian Nation Integrated Tribal Solid Waste Management Plans (ITSWMP) ~

St. Regis Mohawk Tribe:	plan developed and approved by Tribal Council
Seneca Nation of Indians:	plan to be revised
Onondaga Nation:	plan developed and approved by Tribal Council; No written plan following oral tradition practices of this nation
Tuscarora Nation:	draft plan prepared
Tonawanda Seneca Nation:	oral plan articulated; not approved by Tribal Council
Oneida Indian Nation:	seeking model language for plan development
Cayuga Nation:	currently no plan developed for Cayuga owned lands

Number of Open Dumps on Region 2 Indian Nation Territories ~

St. Regis Mohawk Tribe:	1(remedial feasibility study in progress)
Seneca Nation of Indians:	22 (this represents a recent compilation of information from the Nation, the Indian Health Service, and EPA)
Onondaga Nation:	none currently known
Tuscarora Nation:	1 (remediation in planning stage)
Tonawanda Seneca Nation:	1 recently removed; 1 needs characterization
Oneida Indian Nation:	status unknown
Cayuga Nation:	currently no open dumps on Cayuga owned lands

Fact Sheet: **Consultation and Coordination with Tribal Governments**
Lead Division: **DEPP**
Applicability: **All Indian Nations**

Background Consultation is in keeping with EPA's long-standing commitment to government-to-government relations with our Indian Nation partners, as described in the 1984 Policy for interacting with tribes/nations. The Consultation Policy reflects the principles expressed in the 1984 Policy, and assure[s] that tribal concerns and interests are considered whenever EPA's actions and/or decisions may affect tribes/nations.

Issue On November 5, 2009, President Obama issued a Memorandum on Tribal Consultation (Memorandum) affirming Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments* (E.O.). The E.O. specifies that each Agency must have a process that is accountable to establish regular and meaningful consultation and coordination with tribal officials in the development of activities that have tribal/nation implications. President Obama mandated that each executive agency develop and implement a plan and strategy to enhance consultation.

Current Status The 1984 EPA Policy for the Administration of Environmental Programs on Indian Reservations (1984 Policy) remains the cornerstone for EPA's Indian program. Administrator Jackson, as every Administrator before her, has reaffirmed the 1984 Policy and has listed Building Strong Tribal Partnerships among her Top Seven National Priorities. In a further effort to enhance the consultation portions of the 1984 Policy, consistently implement the E.O., comply with President Obama's memorandum, and after consultation with tribes/nations, EPA submitted a Plan of Action to the Office of Management and Budget and to federally-recognized Tribes. This Plan of Action was our first step in developing an enhanced Tribal Consultation and Coordination Policy (Policy or Consultation Policy), and outlines the actions taken to develop the EPA Consultation and Coordination Policy (see Background for Steps 1-6).

Interest from Elected Officials All of the R2 Indian Nations have expressed an interest in enhancing Consultation and Coordination and are very engaged on this matter with us.

Options and recommendations

1. Educate senior leadership team about the Consultation Policy and its requirements for R2 **(complete)**

R2 Update: John Filippelli, Acting Deputy Director, DEPP has briefed the senior leadership team.

2. Educate staff whose work involves interaction with Indian nations (JW) **(complete)**

R2 Update: Janice Whitney, R2's Tribal Consultation Advisor met with Branch Chiefs in the Divisions to explain the Policy and conducted a training session for staffers on June 20, 2011.

3. Offer sensitivity training for R2 staff who have not yet received this training (GJ) (upcoming)

R2 update: Grant Jonathan, Special Emphasis Program Manager, is working with the nations to design and offer a cultural sensitivity training sometime in 2011. Audience: potentially new employees or others who now work in areas which involves interaction with Indian nations, and who did not take the extensive cultural sensitivity training classes offered in 1999 when the entire Region was trained.

EPA's Plan of Action

EPA Designated Official EPA appointed the Assistant Administrator for the Office of International Affairs (OITA), or any successor office, as the Executive Order-designated Agency official with principal responsibility for the Agency's implementation of the Executive Order. This authority ensures that the Agency conducts consultation with Tribes consistently throughout the Agency. The designated official also ensures that Agency program-office and regional-consultation policies are consistent with the Executive Order and the Agency's future Consultation Policy.

Interpretation of Executive Order 13175 EPA's goal is to implement the 1984 Policy and the Executive Order consistently with each other. EPA believes that this will result in broad application of the Executive Order to Agency actions; the planned Consultation Policy is intended to implement such an interpretation. The ultimate goal of this planned Consultation Policy will be to strengthen the consultation, coordination, and partnership between Tribes and EPA.

Incorporation of Existing Partnership Groups As a part of the Consultation Policy development and our future work together, EPA is incorporating existing Tribe-EPA partnerships into our coordination and consultation efforts.

Consultation Policy Development

1. Review of Tribal Comments (through EPA's Tribal internet Portal, consultation meetings and calls)
2. Consultation During Policy Development
3. Issuance of Draft Consultation Policy within 270 days after the date of the Presidential Memorandum, and report to OMB on the draft Consultation Policy.
4. Additional Tribal Review
5. Federal Register Publication on 12/15/2010; 60-day public comment period which closed 2/16/2011
6. Issuance of the final Consultation Policy, posted on EPA's Tribal Portal website May 4, 2011.

Fact Sheet: General Assistance Program (GAP) Funding Matters
Division: DEPP
Applicability: All Indian Nations

Background:

Under the *Indian Environmental General Assistance Program Act of 1992*, the Administrator of the USEPA is required to establish an *Indian Environmental General Assistance Program* that:

- (a) Provides general assistance grants to Indian tribal governments and intertribal consortia *to build capacity to administer environmental regulatory programs* that may be delegated by the EPA on Indian lands; and
- (b) Provides technical assistance from the EPA to Indian Tribal governments and intertribal consortia in the *development of multimedia programs to address environmental issues* on Indian lands.

Because there were seven federally-recognized Indian Nations in Region 2, the American Indian Environmental Office (AIEO) would provide a General Assistance Program (GAP) allocation of \$770,000 to the Region with the intent of providing an allocation of \$110,000 per Indian Nation. Presently, Region 2 awards GAP funding *directly* to two Indian Nations: (1) the St. Regis Mohawk Tribe (SRMT) and (2) the Seneca Nation of Indians (SNI). The Region also awards GAP funds to one intertribal consortium called the Haudenosaunee Environmental Task Force (HETF). HETF is awarded GAP funding to fund the development activities of the Cayuga, Onondaga, Tonawanda Seneca and Tuscarora Nations. No GAP funds are currently provided to the Oneida Indian Nation (OIN).

In October 2010, the *Shinnecock Indian Nation (SIN)* was officially awarded federal recognition by the U.S. Department of the Interior's Bureau of Indian Affairs (BIA). As a federally-recognized tribe, the Shinnecock became eligible for federal financial assistance such as for housing, health, education, and also for protecting the environment and public health.

We have received confirmation from AIEO that next fiscal year's allocation of GAP will be for \$880,000. Of this allocation, \$110,000 would be available to the Shinnecock Indian Nation for environmental program development. This would require the Nation to submit an approvable GAP workplan and budget for capacity building and program development activities starting as soon as January 1, 2012.

Issues:

The Indian Nations within Region 2 have two concerns in regards to the General Assistance Program:

- 1- Lack of Adequate Funding
- 2- Use of General Assistance Funding for Implementation

Lack of Adequate Funding:

The FY 2010 GAP allocation from HQ to the Region 2 Indian program was \$770,000. This amount is significantly less than the needs identified by the Indian Nations and less than annualized amounts that R2 has awarded in previous years. For example, R2 awarded \$1 million-plus to our three Indian Nation grantees in 2009 by adding discretionary funds (from combined sources) to the 2009 GAP budget. Region 2 has attempted to fully fund Indian Nation GAP requests. Where requests for funding exceed our regional allocation of \$770,000, the R2 Indian Program seeks additional funding through the RA discretionary/priority funds process. In recent years, the availability of discretionary funds has dwindled and is limited to requests for special projects that have specific conditions and requirements.

We also have encouraged the Indian nations to apply for program grants wherever possible to augment and/or offset GAP funds requests. Letters from the RA were sent to grantees to advise them of the cut in GAP assistance and to recommend that they consider options as early as possible to best deal with the situation.

Region 2 will continue to:

- Encourage the Indian nations to apply for program grants to further grow Indian nation environmental programs, thereby supplementing the GAP funds.
- Coordinate with HQs and through the National Indian Workgroup, to seek to address the GAP shortfall.
- Seek RA discretionary funds to support GAP where available.

GAP funds for Implementation:

Indian nations are interested in program implementation using GAP funds. However, GAP is designed to support development of programs; the implementation of programs through GAP is limited to solid waste.

GAP is a program that allows for Indian nation environmental capacity building. While GAP guidance does not generally allow GAP funds to be used for program implementation (the exception is solid waste), GAP funds can be used for many types of activities. The SNI and HETF would like to utilize GAP funds for implementation due to difficulties of coming in for program funds that have Treatment as a State ("TAS") requirements and to minimize burdensome paperwork associated with coming in for many small program grants.

The Region will continue to raise this national issue to the attention of the National Indian Workgroup and to AIEO as it has for the past several years.